RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED
JAN - 4 2016
OFFICE OF THE CLERK

NOS. 14-1418, -1453, -1505, 15-35, -105, -119, & -191

In the Supreme Court of the United States

DAVID A. ZUBIK, ET AL.
v.
SYLVIA BURWELL, ET AL.

PRIESTS FOR LIFE, ET AL.
v.
DEPARTMENT OF HEALTH & HUMAN SERVICES, ET AL.

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, ET AL.
v.
SYLVIA BURWELL, ET AL.

EAST TEXAS BAPTIST UNIVERSITY, ET AL.
v.
SYLVIA BURWELL, ET AL.

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, ET AL.
v.
SYLVIA BURWELL, ET AL.

SOUTHERN NAZARENE UNIVERSITY, ET AL.
v.
SYLVIA BURWELL, ET AL.

GENEVA COLLEGE
v.
SYLVIA BURWELL, ET AL.

On Writ of Certiorari to the U.S. Courts of Appeals for the Third, Fifth, Tenth and D.C. Circuits

JOINT APPENDIX VOLUME I OF III

PETITIONS FOR CERTIORARI FILED MAY 29, JUNE 9, JUNE 19, JULY 8, JULY 23, JULY 24, AUGUST 11, 2015
CERTIORARI GRANTED NOVEMBER 6, 2015
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TABLE OF CONTENTS

Page

VOLUME I

JOINT APPENDIX MATERIALS FOR NO. 14-1418

Docket Entries, *Zubik v. Sebelius*, No. 2:13-cv-01459 (W.D. Pa.) 1

Docket Entries, *Persico v. Sebelius*, No. 1:13-cv-00303 (W.D. Pa.) 15

Docket Entries, *Zubik v. Sebelius*, No. 14-1377 (3d Cir.) 27

Stipulation of Undisputed Facts 39

Deposition of Cardinal Timothy Dolan 68

Declaration of Susan Rauscher 74

Declaration of David S. Stewart 84

Declaration of Father Ronald Lengwin 92

Declaration of Father Scott Jabo 105

Declaration of Mary Maxwell 112

Declaration of David Murphy 121

Declaration of Father Scott Detisch 131

Additional Stipulated Facts 141

Excerpts from Transcript of Proceedings, Nov. 12, 2013 146

- Excerpts from Testimony of Bishop David A. Zubik 147
- Excerpts from Testimony of Susan Rauscher 158
- Excerpts of Testimony from Bishop Lawrence Persico 164
- Excerpts of Testimony from Father Scott Jabo 173
- Excerpts of Testimony from Mary Maxwell 178

Excerpts from Transcript of Proceedings, Nov. 13, 2013 185

JOINT APPENDIX MATERIALS FOR NO. 14-1453
Docket Entries, *Priests for Life v. U.S. Dep't Health & Human Servs.*, No. 1:13-cv-01261 (D.D.C.) 192
Docket Entries, *Priests for Life v. HHS*, No. 13-15368 (D.C. Cir.) 201
Declaration of Father Frank Pavone and Priests for Life 226
Declaration of Dr. Alveda King 272
Declaration of Janet Morana 280
Declaration of Robert J. Muise 288
Supplemental Declaration of Priests for Life 320
Supplemental Declaration of Robert J. Muise 324
JOINT APPENDIX MATERIALS FOR NO. 14-1505
Docket Entries, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 1:13-cv-01441 (D.D.C.) 339
Docket Entries, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 14-5021 (D.C. Cir.) .. 353
Excerpts from Complaint in *Roman Catholic Archbishop of Washington v. Sebelius*, No. 1:13-cv-01441 (D.D.C.) 358
Affidavit of the Archdiocese of Washington 359
Affidavit of the Consortium of Catholic Academies of the Archdiocese of Washington, Inc. 366
Affidavit of Archbishop Carroll High School 371
Affidavit of Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc. 376
Affidavit of Mary of Nazareth Roman Catholic Elementary School, Inc. 381
Affidavit of Catholic Charities of the Archdiocese of Washington 386
Affidavit of Victory Housing, Inc. 391

Affidavit of Catholic Information Center, Inc. 396
Affidavit of the Catholic University of America... 401
Affidavit of Thomas Aquinas College 407
Comments of the U.S. Conference of Bishops (Mar. 20, 2013)..... 412
Affidavit of Reverend Carter Griffin..... 451
Supplemental Affidavit of the Archdiocese of Washington..... 459
Supplemental Affidavit of the Consortium of Catholic Academies of the Archdiocese of Washington, Inc..... 463
Supplemental Affidavit of Archbishop Carroll High School..... 467
Supplemental Affidavit of Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc..... 471
Supplemental Affidavit of Mary of Nazareth Roman Catholic Elementary School, Inc..... 476
Supplemental Affidavit of Catholic Charities of the Archdiocese of Washington..... 480
Supplemental Affidavit of Victory Housing, Inc..... 484
Supplemental Affidavit of the Catholic Information Center, Inc. 488
Supplemental Affidavit of the Catholic University of America 492
Supplemental Affidavit of Thomas Aquinas College..... 494
Excerpts from District Court Motions Hearing (Nov. 22, 2013)..... 496
Comments of the Archdiocese of Washington (Apr. 4, 2013) 504
Excerpts from Institute of Medicine Report..... 539

VOLUME II

JOINT APPENDIX MATERIALS FOR NO. 15-35

Docket Entries, *East Texas Baptist University v. Sebelius*, No. 4:12-cv-03009 (S.D. Tex.) 586
Docket Entries, *East Texas Baptist University v. Burwell*, No. 14-20112 (5th Cir.) 603
Excerpts from First Amended Complaint in Intervention 636
Declaration of Samuel W Oliver 640
Excerpts from East Texas Baptist University Policy and Procedures Manual 660
East Texas Baptist University Application for Admission 667
Bylaws of East Texas Baptist University 672
Report of the Baptist Faith and Message Study Committee to the Southern Baptist Convention .. 677
East Texas Baptist University Student Handbook, 2013-2014 693
The Ethics and Religious Liberty Commission 697
East Texas Baptist University Healthcare Benefits Plan 703
Congressional Testimony of Samuel W. Oliver 717
Letter from East Texas Baptist University to Kathleen Sebelius, Secretary Department of Health and Human Services 721
Supplemental Declaration of Samuel W Oliver .. 726
Declaration of Dr. Robert B. Sloan 730
Excerpts from Houston Baptist University Website 748
Houston Baptist University Student Handbook, 2012-2013 751
The Ten Pillars: A 12 Year Vision for the Future of Houston Baptist University 760
Summary Plan Information 764

Preventive Care Schedule 772
"*Your* GuideStone Financial Resources" Pamphlet 779
Guidestone, PPACA Overview 784
Supplemental Declaration of Robert B. Sloan 789
Declaration of Jeffrey K. Jue 795
Charter Excerpts 811
JOINT APPENDIX MATERIALS FOR NO. 15-105
Docket Entries, Little Sisters of the Poor Home for the Aged, Denver, Colorado v Sebelius, No. 1:13-cv-02611 (D. Colo.) 818
Docket Entries, *Reaching Souls International Inc. v. Sebelius*, No. 5:13-cv-01092 (W.D. Okla.) .. 836
Docket Entries, *Little Sisters of the Poor v. Burwell*, No. 13-1540 (10th Cir.) 843
Docket Entries, *Reaching Souls International v. Burwell*, No. 14-6028 (10th Cir.) 872
HRSA Web Page 897
FDA contraceptive guide 903
Press Release, Kathleen Sebelius, Health and Human Services Secretary, Jan. 20, 2012 934
LSP Comment on Proposed Rulemaking (Apr. 8, 2013) 937
Statement of the Little Sisters of the Poor on the HHS Mandate (Mar. 1, 2012) 945
Little Sisters of the Poor Mission, Vision, and Values, 2012 952
Declaration of Adèle A. Keim 954
Screenshots of government grandfathered information 956
CMS.gov screenshots 969
Estimate of small employers in United States 973
Declaration of Mother Loraine Marie Clare Maguire 975

Declaration of Brother Michael Quirk 991
United States Conference of Catholic Bishops, Ethical & Religious Directives for Catholic Healthcare Services..... 1015
Government's Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction 1060
Supplemental Declaration of Mother Loraine Marie Clare Maguire..... 1085
Supplemental Declaration of Brother Michael Quirk..... 1092
Communication between White House and IRS re: Entities Eligible 1099

VOLUME III
Second Supplemental Declaration of Brother Michael Quirk (Nov. 22, 2013) 1107
Deposition of Gary M. Cohen 1110
Original EBSA Form 700 1113
Church Alliance Comments on Proposed Rulemaking 1117
Excerpt from Government Reply in Support of Motion to Dismiss or for Summary Judgment ... 1160
Excerpts of Transcript of Proceeding (Dec. 16, 2013) 1163
Declaration of Timothy E. Head 1171
Declaration of Joshua Wells 1190
Declaration of David Armstrong 1202
Declaration of Joseph Ormont 1215
Supplemental Declaration of Timothy E. Head . 1223
JOINT APPENDIX MATERIALS FOR NO. 15-119
Docket Entries, *Southern Nazarene University v. Sebelius*, No. 5:13-cv-01015 (W.D. Okla.) 1286
Docket Entries, *Southern Nazarene University v. Burwell*, No. 14-6026 (10th Cir.) 1293
Excerpts from Complaint in *Southern Nazarene University v. Sebelius*, No. 5:13-cv-01015 (W.D. Okla.) 1312
Joint Stipulation of Facts 1313
JOINT APPENDIX MATERIALS FOR NO. 15-191
Docket Entries, *Geneva College v. Sebelius*, No. 2:12-cv-00207 (W.D. Pa.) 1326
Docket Entries, Geneva College v. Secretary U.S. Department of Health and Human Services, No. 14-6026 (3d Cir.) 1356
Second Amended Complaint 1376
Declaration of Timothy R. Baird 1394

No. 14-1418

CLOSED

U.S. District Court

Western District of Pennsylvania (Pittsburgh)
CIVIL DOCKET FOR CASE #: 2:13-cv-01459-AJS

ZUBIK et al v. SEBELIUS et al
Assigned to: Judge Arthur J. Schwab
related Cases:
2:13-cv-00930-AJS
2:14-cv-00681-AJS
Case in other court: USCA, 14-01377
Cause: 42:2000 Civil Rights: Other

Date Filed: 10/08/2013
Date Terminated: 12/20/2013
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

10/08/2013	1	COMPLAINT against JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY (Filing fee, including Administrative fee, $400, receipt number 0315-2955420), filed by THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK, CATHOLIC

		CHARITIES OF THE DIOCESE OF PITTSBURGH, INC. (Attachments: # 1 Civil Cover Sheet, # 2 Summons US Attorney General, # 3 Summons US Attorney, # 4 Summons Sebelius, # 5 Summons Perez, # 6 Summons Lew, # 7 Summons Dept. of HHS, # 8 Summons Dept. of Labor, # 9 Summons Dept. of Treasury) (jsp) (Entered: 10/08/2013)
		* * *
10/08/2013	4	MOTION for Expedited Preliminary Injunction by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Proposed Order, # 2 Index of Exhibits, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5 Part 1, # 8 Exhibit 5 Part 2, # 9 Exhibit 5 Part 3, # 10 Exhibit 6, # 11 Exhibit 7, # 12 Exhibit 8, # 13 Exhibit 9, # 14 Exhibit 10, # 15 Exhibit 11) (jsp) (Entered:

		10/08/2013)
		* * *
10/08/2013	6	BRIEF in Support re 4 Motion for Expedited Preliminary Injunction, 5 Motion for Expedited Scheduling Order or Expedited Status Conference filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (jsp) (Entered: 10/08/2013)
		* * *
10/29/2013	23	BRIEF in Opposition re 4 Motion for Preliminary Injunction, filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) (Entered: 10/29/2013)
		* * *
11/01/2013	29	BRIEF of Amici Curiae in Opposition re 4 Motion for

		Preliminary Injunction, filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF PENNSYLVANIA. (Walczak, Witold) Modified on 11/4/2013. (jsp) (Entered: 11/01/2013)
		* * *
11/05/2013	38	REPLY BRIEF re 4 Motion for Preliminary Injunction, filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) (Entered: 11/05/2013)
		* * *
11/07/2013	43	STIPULATION to Undisputed Facts by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) Modified on 11/8/2013. (jsp) (Entered: 11/07/2013)

* * *

11/08/2013	49	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *or, in the Alternative, for Summary Judgment* by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley). Added MOTION for Summary Judgment on 11/13/2013 (jsp). (Entered: 11/08/2013)
11/08/2013	50	BRIEF in Support re 49 Motion to Dismiss for Failure to State a Claim, *or, in the Alternative, Motion for Summary Judgment* filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) Modified on 11/13/2013. (jsp) (Entered:

		11/08/2013) * * *
11/12/2013	52	DEPOSITION of Gary M. Cohen taken on April 16, 2013 by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	53	DEPOSITION of Cardinal Timothy Dolan taken on November 7, 2013 by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Exhibit A) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	54	DEPOSITION of Shawn Braxton taken on November 8, 2013 by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC

		DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	55	NOTICE *of Filing of Plaintiffs' Exhibits Admitted into Evidence at the November 12, 2013 Hearing on Plaintiffs' Motion for Preliminary Injunction* by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK (Attachments: # 1 P1, # 2 P2, # 3 P3, # 4 P4, # 5 P5, # 6 P6, # 7 P7, # 8 P8, # 9 P10, # 10 PI 1, # 11 P12, # 12 P13, # 13 P14, # 14 P15, # 15 P16, # 16 P17, # 17 P18, # 18 P19, # 19 P20, # 20 P21, # 21 P23, # 22 P24, # 23 P25, # 24 P26, # 25 P27, # 26 P28, # 27 P29, # 28 P30, # 29 P31, # 30 P32, # 31 P33, # 32 P34, # 33 P35, # 34 P36, # 35 P44, # 36 P46 part 1, # 37 P46 part 2, # 38 P46 - part 3, # 39 P46 part 4, # 40 P46 part 5, # 41 P46 -part 6, # 42 P46

		part 7, # 43 P46 part 8, # 44 P46 part 9, # 45 P46 part 10, # 46 P51, # 47 P75, # 48 P79, # 49 P85, # 50 P86, # 51 P87, # 52 P88, # 53 P89, # 54 P90, # 55 P91, # 56 P92) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	56	Minute Entry for proceedings held before Judge Arthur J. Schwab: Motion Hearing held on 11/12/2013 re 4 MOTION for Preliminary Injunction filed by DAVID A. ZUBIK, THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC. Defendants to file their Response to Motion to Strike (doc no. 51 at 13-1459 and doc no 50 at 13-303 Erie) by 11/15/13; Reply due 11/18/13. Supplemental Briefing to Motion for Preliminary Injunction from all parties including amicus due 11/15/13 by 5:00 PM. Briefs limited to 10 pages. (Court Reporter: Richard Ford/Shirley Hall) (lck) (Entered: 11/13/2013)

11/12/2013	57	EXHIBITS Shown at Hearing on Motion for Preliminary Injunction held on 11/12/13. (lck) (Entered: 11/13/2013)
11/13/2013		Minute Entry for proceedings held before Judge Arthur J. Schwab: Case Management Conference held on 11/13/2013. Plaintiffs' shall file a new proposed Case Management Order. Case is exempt from ADR requirement. Text-only entry; no PDF document will issue. This text-only entry constitutes the Court's order or notice on the matter. Signed by Judge Arthur J. Schwab on 11/13/13. (Court Reporter: R. Ford) (ms) (Entered: 11/13/2013)
		* * *
11/13/2013	59	ADDITIONAL STIPULATED FACTS by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) Modified on 11/15/2013. (jsp) (Entered: 11/13/2013)

* * *

11/13/2013	60	Minute Entry for proceedings held before Judge Arthur J. Schwab: Motion Hearing held on 11/13/2013 re 4 MOTION for Preliminary Injunction filed by DAVID A. ZUBIK, THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC. The Court hears argument from the parties. The Court rules that Exhibit No. P 93 is Admitted. Defense Counsel may file a supplement to Ex. No. P93 by 11/15/13. Parties agree on exhibits admitted into the record. (Court Reporter: Richard Ford) (lck) (Entered: 11/13/2013)

* * *

11/15/2013	67	JOINT SUPPLEMENTAL BRIEF in Support re: 6 Brief in Support of re: 4 Motion for Preliminary Injunction, filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF

		PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) Modified on 11/18/2013. (plh) (Entered: 11/15/2013)
11/15/2013	68	BRIEF in Opposition to 4 MOTION for Preliminary Injunction, filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) (Entered: 11/15/2013)
		* * *
11/21/2013	75	MEMORANDUM OPINION RE: 4 Plaintiffs' Motions for Expedited Preliminary Injunction. An appropriate Order follows. Signed by Judge Arthur J. Schwab on 11/21/2013. (lcb) (Entered: 11/21/2013)
11/21/2013	76	ORDER OF COURT GRANTING 4 Plaintiffs' Motions for Expedited Preliminary Injunction. Signed by Judge Arthur J. Schwab on 11/21/2013. (lcb) (Entered: 11/21/2013)
12/13/2013	77	BRIEF in Opposition re 49

		Motion to Dismiss for Failure to State a Claim, Motion for Summary Judgment, filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Index to Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D) (Pohl, Paul) (Entered: 12/13/2013)
12/20/2013	78	Unopposed MOTION for Permanent Injunction by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Proposed Order) (Pohl, Paul) (Entered: 12/20/2013)
12/20/2013	79	BRIEF in Support re 78 Motion for Permanent Injunction filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A.

		ZUBIK. (Pohl, Paul) (Entered: 12/20/2013)
12/20/2013	80	NOTICE *of Non-Opposition to Plaintiffs' Motion to Convert Preliminary Injunction into Permanent Injunction* by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY re 78 Motion for Permanent Injunction (Humphreys, Bradley) (Entered: 12/20/2013)
12/20/2013	81	ORDER GRANTING 78 Unopposed Motion for Permanent Injunction. Signed by Judge Arthur J. Schwab on 12/20/13. (lck) (Entered: 12/20/2013)
02/11/2014	82	NOTICE OF APPEAL as to 81 Order on Motion for Permanent Injunction by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR,

U.S. DEPARTMENT OF TREASURY. Motion for IFP N/A. Certificate of Appealability N/A. Court Reporter(s): Richard Ford. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. The Transcript Purchase Order form will NOT be mailed to the parties. The form is available on the Court's internet site. (Humphreys, Bradley) (Entered: 02/11/2014)

U.S. DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
(ERIE)
CIVIL DOCKET FOR CASE #: 1:13-cv-00303-AJS

PERSICO et al. v. SEBELIUS et al.
Assigned to: Judge Arthur J. Schwab
related Case: 2:13-cv-00930-AJS
Case in other court: USCA, 14-01376
Cause: 42:2000 Civil Rights: Other

Date Filed: 10/08/2013
Date Terminated: 12/20/2013
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

10/08/2013	1	COMPLAINT against All Defendants (Filing fee, including Administrative fee, $400, receipt number 0315–2955338), filed by THE ROMAN CATHOLIC DIOCESE OF ERIE, PRINCE OF PEACE CENTER, INC., ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, ST. MARTIN CENTER, INC. (Attachments: # *1* Civil Cover Sheet) (dm) (Entered: 10/08/2013)
		* * *
10/08/2013	6	MOTION for Expedited Preliminary Injunction by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T.

PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # *1* Proposed Order) (dm) (Entered: 10/08/2013)

* * *

10/08/2013	8	BRIEF in Support re *6* Motion for Preliminary Injunction, *7* Motion for Expedited Scheduling Order or Expedited Status Conference filed by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (dm) (Entered: 10/08/2013)
10/08/2013	9	EXHIBITS in Support of *6* Motion for Expedited Preliminary Injunction, by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # *1* Exhibit 1, # *2* Exhibit 2, # *3* Exhibit 3, # *4* Exhibit 4, # *5* Exhibit 5 Part 1, # *6* Exhibit 5 Part 2, # *7* Exhibit 5 Part 3, # *8* Exhibit 6, # *9* Exhibit 7, # *10* Exhibit 8, # *11* Exhibit 9, # *12* Exhibit 10, # *13*

Exhibit 11, # *14* Exhibit 12) (dm) (Entered: 10/08/20 13)

* * *

10/29/2013 28 BRIEF in Opposition re *6* Motion for Preliminary Injunction filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) (Entered: 10/29/2013)

* * *

11/05/2013 34 REPLY BRIEF re *6* Motion for Preliminary Injunction filed by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Pohl, Paul) (Entered: 11/05/2013)

* * *

11/07/2013 39 STIPULATION *of Undisputed Facts* by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Pohl, Paul) (Entered: 11/07/2013)

* * *

11/08/2013	48	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *or, in the Alternative, for Summary Judgment* by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley). Added MOTION for Summary Judgment on 11/12/2013 (dm). (Entered: 11/08/2013)
11/08/2013	49	BRIEF in Support re *48* Motion to Dismiss for Failure to State a Claim, *or, in the Alternative, for Summary Judgment* filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) (Entered: 11/08/2013)

* * *

11/12/2013	51	DEPOSITION of Gary M. Cohen taken on April 16, 2013 by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE.

		(Attachments: # *1* Exhibit A, # *2* Exhibit B) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	52	DEPOSITION of Cardinal Timothy Dolan taken on November 7, 2013 by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # *1* Exhibit A) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	53	DEPOSITION of Shawn Braxton taken on November 8, 2013 by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # 1 Exhibit A, # *2* Exhibit B) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	54	NOTICE *of Filing of Plaintiffs' Exhibits Admitted into Evidence at the November 12, 2013 Hearing on Plaintiffs' Motion for Preliminary Injunction* by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER,

INC., THE ROMAN CATHOLIC DIOCESE OF ERIE (Attachments: # *1* P1, # *2* P2, # *3* P3, # *4* P4, # *5* P5, # *6* P6, # *7* P7, # *8* P8, # *9* P10, # *10* P11, # *11* P12, # *12* P13, # *13* P14, # *14* P15, # *15* P16, # *16* P17, # *17* P18, # *18* P19, # *19* P20, # *20* P21, # *21* P23, # *22* P24, # *23* P25, # *24* P26, # *25* P27, # *26* P28, # *27* P29, # *28* P30, # *29* P31, # *30* P32, # *31* P33, # *32* P34, # *33* P35, # *34* P36, # *35* P44, # *36* P46 – part 1, # *37* P46 – part 2, # *38* P46 – part 3, # *39* P46 – part 4, # *40* P46 – part 5, # *41* P46 – part 6, # *42* P46 – part 7, # *43* P46 – part 8, # *44* P46 – part 9, # *45* P46 – part 10, # *46* P51, # *47* P75, # *48* P79, # *49* P85, # *50* P86, # *51* P87, # *52* P88, # *53* P89, # *54* P90, # *55* P91, # *56* P92) (Pohl, Paul) (Entered: 11/12/2013)

11/12/2013 55 Minute Entry for proceedings held before Judge Arthur J. Schwab: Motion Hearing held on 11/12/2013 re *6* MOTION for Preliminary Injunction filed by ERIE CATHOLIC PREPARATORY SCHOOL, PRINCE OF PEACE CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE, LAWRENCE T. PERSICO, ST. MARTIN CENTER, INC. Defendants to file their Response to Motion to Strike (doc no. 51 at 13–

		1459 and doc no *50* at 13–303 Erie) by 11/15/13; Reply due 11/18/13; Supplemental Briefing to Motion for Preliminary Injunction from all parties including amicus due 11/15/13 by 5:00 PM. Briefs limited to 10 pages. (Court Reporter: Richard Ford/Shirley Hall) (lck) (Entered: 11/13/2013)
11/12/2013	56	EXHIBITS Shown at Hearing on Motion for Preliminary Injunction held on 11/12/13. (lck) (Entered: 11/13/2013)
11/13/2013		Minute Entry for proceedings held before Judge Arthur J. Schwab: Case Management Conference held on 11/13/2013. Plaintiffs' shall file a new proposed Case Management Order. Case is exempt from ADR requirement. Text–only entry; no PDF document will issue. This text–only entry constitutes the Court's order or notice on the matter. Signed by Judge Arthur J. Schwab on 11/13/13. (Court Reporter: R. Ford) (ms) (Entered: 11/13/2013)

* * *

11/13/2013	58	STIPULATION *Additional Stipulated Facts* by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Pohl, Paul) (Entered: 11/13/2013)

* * *

11/13/2013	59	Minute Entry for proceedings held before Judge Arthur J. Schwab: Motion Hearing held on 11/13/2013 re MOTION for Preliminary Injunction filed by ERIE CATHOLIC PREPARATORY SCHOOL, PRINCE OF PEACE CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE, LAWRENCE T. PERSICO, ST. MARTIN CENTER, INC. The Court hears argument from the parties. The Court rules that Exhibit No. P 93 is Admitted. Defense Counsel may file a supplement to Ex. No. P93 by 11/15/13. Parties agree on exhibits admitted into the record. (Court Reporter: Richard Ford) (lck) (Entered: 11/13/2013)

* * *

11/15/2013	66	BRIEF in Support re *6* Motion for Preliminary Injunction *(Joint, Supplemental)* filed by ERIE

		CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Pohl, Paul) (Entered: 11/15/2013)
11/15/2013	67	BRIEF in Opposition to *6* MOTION for Preliminary Injunction, *Supplemental* filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) (Entered: 11/15/2013)
		* * *
11/21/2013	75	MEMORANDUM OPINION RE: *6* Plaintiffs' Motions for Expedited Preliminary Injunction. An appropriate Order follows. Signed by Judge Arthur J. Schwab on 11/21/2013. (lcb) (Entered: 11/21/2013)
11/21/2013	76	ORDER OF COURT GRANTING *6* Plaintiffs' Motions for Expedited Preliminary Injunctions. Signed by Judge Arthur J. Schwab on 11/21/2013. (lcb) (Entered: 11/21/2013)
12/13/2013	77	BRIEF in Opposition re *48* Motion to Dismiss for Failure to State a

		Claim, Motion for Summary Judgment, filed by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # *1* Index of Exhibits, # *2* Exhibit A, # *3* Exhibit B, # *4* Exhibit C, # *5* Exhibit D) (Pohl, Paul) (Entered: 12/13/2013)
12/20/2013	78	Unopposed MOTION for Permanent Injunction by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # *1* Proposed Order) (Pohl, Paul) (Entered: 12/20/2013)
12/20/2013	79	BRIEF in Support re *78* Motion for Permanent Injunction, filed by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Pohl, Paul) (Entered: 12/20/2013)
12/20/2013	80	NOTICE *of Non–Opposition to Plaintiffs' Motion to Convert Preliminary Injunction into*

		Permanent Injunction by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY re *78* Motion for Permanent Injunction. (Humphreys, Bradley) (Entered: 12/20/2013)
12/20/2013	81	ORDER GRANTING *78* Unopposed Motion for Permanent Injunction. Signed by Judge Arthur J. Schwab on 12/20/13. (lck) (Entered: 12/20/2013)
02/11/2014	82	NOTICE OF APPEAL as to *81* Order on Motion for Permanent Injunction by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. Motion for IFP N/A. Certificate of Appealability N/A. Court Reporter(s): Richard Ford. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. The Transcript Purchase Order form will NOT be mailed to the parties. The form is

available on the Court's internet site. (Humphreys, Bradley) (Entered: 02/11/2014)

Third Circuit Court of Appeals

Court of Appeals Docket #: 14-1377
Nature of Suit: 2440 Other Civil Rights
David Zubik, et al v. Secretary United States Depart, et al
Appeal From: United States District Court for the Western District of Pennsylvania
Fee Status: NA

Docketed: 02/24/2014
Termed: 02/11/2015

Current Cases:

Lead	Member	Start	End
joined			
13-3536	14-1374	05/01/2014	
13-3536	14-1376	05/01/2014	
13-3536	14-1377	05/01/2014	

02/24/2014 CIVIL CASE DOCKETED. Notice filed by Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Labor and United States Department of the Treasury in District Court No. 2-13-cv-01459. (ARR)

* * *

02/24/2014 CLERK ORDER consolidating the actions at Nos. 14-1376 and 14-1377 for

all purposes. The parties are advised that all case opening forms, motions and briefs must be electronically filed in all 14-1376] (ARR)

* * *

03/18/2014 ORDER (Clerk) Motion by Appellants to Consolidate Appeal Nos. 13-3536, 14-1374, 14-1376 and 14-1377 for purposes of filing a single opening brief and single reply brief and Responses are referred to a motions panel, filed. [13-3536, 13-2814, 14-1374, 14-1376, 14-1377] (TMM)

* * *

06/10/2014 ECF FILER: ELECTRONIC BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed. Certificate of Service dated 06/10/2014 by ECF. [Entry has been spread to case no. 14-1377] [13-3536, 14-1374, 14-1376, 14-1377]--[Edited 06/10/2014 by EMA] (ABK)

* * *

06/17/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Americans United for

Separation of Church and State in support of Appellant/Petitioner. Certificate of Service dated 06/17/2014. [13-3536, 14-1374, 14-1376, 14-1377] (ANK)

* * *

06/17/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Amici National Women's Law Center; American Association of University Women (AAUW); American Federation of State Health; Feminist Majority Foundation; Legal Momentum, Merger Watch; NARAL Pro Choice America; National Organization for Women (NOW) Foundation; National Partnership for Women and Planned Parenthood of Central and Greater Northern New Jersey, Inc.; Planned Parenthood of Delaware; Planned Parenthood Keystone; Planned Parenthood of Metropolitan New Jersey; Plan Parenthood of Southern New Jersey; Planned Parenthood of Western Pennsylvania; Population Connection; Raising Women's Voices for the Health Care We Need; Service Employees Internat Appellant/Petitioner. Certificate of Service dated 06/17/2014. [13-3563, 14-1374, 14-1376, 14-1377] (CED)

06/17/2014 ECF FILER: ELECTRONIC

AMICUS/INTERVENOR BRIEF on behalf of Amici Julian Bond, American Civil Liberties Union, and American Civil Liberties Union of Pennsylvania in support of App ECF [13-3536, 14-1374, 13-1376 & 13-1377] (SJR)

* * *

07/08/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Proposed Amici-Appellants American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Asian Americans Advancing Justice Los Angeles, California Womens Law Center, Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Hispanic Medical Association, National Latina Institute for Reproductive Health, National Womens Health Network and Sexuality Information & Education Council of the United States in 13-3536, 14-1374, 14-1376, Proposed Amici-Appellants American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Asian Americans Advancing Justice Los Angeles, California Womens Law Center,

Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Hispanic Medical Association, National Womens Health Network, Sexuality Information & Education Council of the United States and Proposed Intervenor-Appellant National Latina Institute for Reproductive Health in 14-1377 Amicus National Health Law Program, et al. in support of Appellant/Petitioner, filed. Certificate of Service dated 06/17/2014 by ECF [13-3536, 14-1374, 14-1376, 14-1377] (SS)

* * *

07/28/2014 ECF FILER: ELECTRONIC BRIEF on behalf of Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377, filed. Certificate of Service dated 07/28/2014 by ECF [Removed from 13-3536]--[Edited 07/29/2014 by EAF] (PMP)

* * *

08/06/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Proposed Amici-Appellees American Bible Society, Association for Christian Schools International, Association of Gospel Rescue Missions, Christian Legal Society, Ethics and Religious Liberty Commission of the Southern Baptist Convention, Institutional Religious Freedom Alliance, Lutheran Church Missouri Synod, National Association of Evangelicals and Prison Fellowship Ministries in 14-1376, 14-1377 in support of Appellee/Respondent, filed. Certificate of Service dated 08/06/2014 by ECF F.R.A.P. 29(a) Permission: NO. [14-1376, 14-1377] (KWC)

* * *

08/11/2014 ECF FILER: ELECTRONIC REPLY BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed. Certificate of Service dated 08/11/2014 by ECF [13-3536, 14-1374, 14-1376, 14-1377] (PN)

* * *

09/23/2014 ECF FILER: Letter dated 09/23/2014 , filed pursuant to Rule 28(j) from counsel for Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor. Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377. This document will be SENT TO THE MERITS PANEL, if/when applicable. [13-3536, 14-1374, 14-1376, 14-1377] (PN)

09/24/2014 ECF FILER: Response filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 to Rule 28(j) letter. Certificate of Service dated 09/24/2014. This document will be SENT TO THE MERITS PANEL, if/when applicable. [14-1376, 13-3536, 14-1374, 14-1377] (PMP)

09/25/2014 ECF FILER: ARGUMENT ACKNOWLEDGMENT filed by Attorney Paul M. Pohl, Esq. for Appellees Lawrence T. Persico, Roman Catholic Diocese of Erie, St Martin

Center Inc, Prince of Peace Center Inc. and Erie Catholic Preparatory School in 14-1376, Attorney Paul M. Pohl, Esq. for Appellees Roman Catholic Diocese of Pittsburgh, David A. Zubik and Catholic Charities Diocese of Pittsburgh Inc in 14-1377 Certificate of Service dated 09/25/2014. [14-1376, 13-3536, 14-1374, 14-1377] (PMP)

09/25/2014 ECF FILER: ARGUMENT ACKNOWLEDGMENT filed by Attorney Patrick Nemeroff, Esq. for Appellants Secretary United States Department of Labor, Secretary United States Department of the Treasury, United States Department of the Treasury, HHS, Secretary United States Department of Health and Human Services and United States Department of Labor in 13-3536, 14-1374, 14-1376, 14-1377. Certificate of Service dated 09/25/2014. [13-3536, 14-1374, 14-1376, 14-1377] (PN)

* * *

10/21/2014 ECF FILER: ELECTRONIC SUPPLEMENTAL BRIEF on behalf of Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh

and David A. Zubik in 14-1377, filed. Certificate of Service dated 10/21/2014 by ECF, US mail. [14-1376, 14-1377] (PMP)

10/21/2014 ECF FILER: ELECTRONIC SUPPLEMENTAL BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed in accordance to the Court's letter of 10/07/2014. Certificate of Service dated 10/21/2014 by ECF. [13-3536, 14-1374, 14-1376, 14-1377]--[Edited 10/21/2014 by TLG] (PN)

* * *

11/19/2014 ARGUED on Wednesday, November 19, 2014. Panel: McKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges. Gregory S. Baylor arguing for Appellees Geneva College, Wayne Hepler and Carrie E. Kolesar; Paul M. Pohl arguing for Appellees Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and Roman Catholic Diocese of Pittsburgh; Mark B. Stern arguing for Appellants Secretary United States Department of

	the Treasury, United States Department of Health and Human Services and United States Department of Labor. [13-3536, 14-1374, 14-1376, 14-1377] (TLG)
	* * *
02/11/2015	PRECEDENTIAL OPINION Coram: MCKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges. Total Pages: 49. Judge: RENDELL Authoring. [13-3536, 14-1374, 14-1376, 14-1377] (PDB)
02/11/2015	JUDGMENT, Reversed. Costs taxed against Appellees. All of the above in accordance with the Opinion of this Court. [13-3536, 14-1374, 14-1376, 14-1377] (PDB)
03/26/2015	ECF FILER: Petition filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 for Rehearing before original panel and the court en banc. Certificate of Service dated 03/26/2015. [14-1376, 14-1377]--[Edited 03/27/2015 by TMM] (PMP)
04/06/2015	ORDER (MCKEE, Chief Judge, RENDELL, AMBRO, FUENTES, SMITH, FISHER, CHAGARES,

JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, SHWARTZ, KRAUSE and *SLOVITER, Circuit Judges) denying Petition for En Banc and for Panel Rehearing filed by Appellees Lawrence T. Persico, Roman Catholic Diocese of Erie, St Martin Center Inc, Prince of Peace Center Inc. and Erie Catholic Preparatory School, Appellees Roman Catholic Diocese of Pittsburgh, David A. Zubik and Catholic Charities Diocese of Pittsburgh Inc, filed. Rendell, Authoring Judge. (*Judge Sloviter is limited to Panel Rehearing Only.) [14-1376, 14-1377] (CJG)

04/09/2015 ECF FILER: Motion filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 to stay mandate. Certificate of Service dated 04/09/2015. [14-1376, 14-1377] (PMP)

04/15/2015 ORDER (MCKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges) Appellees' Motion to stay mandate pending Petition for Writ of Certiorari is denied, filed. McKee, Authoring Judge. [14-1376, 14-1377] (TMM)

04/15/2015 MANDATE ISSUED, filed. [14-1376, 13-3536, 14-1374, 14-1377] (TMM)

04/16/2015 ORDER (Clerk) By order entered April 15, 2015, the Supreme Court of the United States order that the mandate issued by the Third Circuit Court of Appeals be recalled and stayed pending receipt of a response and further order of the Supreme Court. In accordance with this directive, it is hereby ORDERED that the mandate issued in this matter is hereby recalled, filed. [14-1376, 14-1377] (TMM)

06/03/2015 NOTICE from U.S. Supreme Court. Petition for Writ of Certiorari filed by Lawrence T. Persico on 05/29/2015 and placed on the docket 06/02/2015 as Supreme Court Case No. 14-1418. [14-1376, 14-1377] (CND)

06/29/2015 NOTICE of Order from U.S. Supreme Court dated 06/29/2015 The application for an order recalling and staying the issuance of the mandate of the Court of Appeals pending the filing and disposition of a petition for a writ of certiorari having been submitted to Justice Alito and by him referred to the Court, the application as presented as denied. (CRG)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, et al.,	)	CIVIL ACTION NO. 1:13-00303
PLAINTIFFS	)	JUDGE ARTHUR J. SCHWAB
v	)	
KATHLEEN SEBELIUS, et al.,	)	
DEFENDANTS.	)	

MOST REVEREND DAVID A. ZUBIK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, et al.,	)	CIVIL ACTION NO. 2:13-cv-01459
PLAINTIFFS,	)	JUDGE ARTHUR J. SCHWAB
v.	)	
KATHLEEN SEBELIUS, et al.,	)	
DEFENDANTS.	)	

STIPULATION TO UNDISPUTED FACTS

The following facts are undisputed for the Court's consideration of Plaintiffs' pending Motions for Preliminary Injunctions:

I. STATUTORY AND REGULATORY HISTORY

A. Statutory Background

1. In March 2010, Congress enacted the Patient Protection and Affordable Care Act, Pub. L. No. 111 148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152 124 Stat. 1029 (2010) (collectively, the "Affordable Care Act," "ACA," or the "Act").
2. The Act established new requirements for "group health plan[s]," broadly defined as "employee welfare benefit plan[s]" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1), that "provide[] medical care to employees or their dependents." 42 U.S.C. § 300gg-91(a)(1).
3. Section 1001 of the Patient Protection and Affordable Care Act ("ACA") requires all group health plans and health insurance issuers that offer non-grandfathered, non-exempt group or individual health coverage to provide coverage for certain preventive services without cost-sharing, including, "[for] women, such additional preventive care and screenings as provided for in comprehensive guidelines supported by the Health Resources and Services Administration [(HRSA)]." 42 U.S.C. §300gg-13(a)(4).
4. The Affordable Care Act provides that certain of its provisions apply to "grandfathered health plans" and certain of its provisions, including 42 U.S.C. § 300gg-13, do not apply to "grandfathered health plans." 42 U.S.C. § 18011.

B. Regulatory Background

(1) Rulemaking from July 2010 to March 2012

5. On July 19, 2010, Defendants issued interim final rules, incorporating the statutory requirement that group health plans provide coverage for women's "preventive care." 75 Fed. Reg. 41,726 (citing 42 U.S.C. § 300gg-13(a)(4)).
6. These initial rules did not define "preventive care," noting that "[t]he Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011." *Id.* at 41,731.
7 At that time, there were no existing HRSA guidelines relating to preventive care and screening for women.
8. The Department of Health and Human Services ("HHS") tasked the Institute of Medicine ("IOM"), a non-governmental organization, with "review[ing] what preventive services are necessary for women's health and well-being and should be considered in the development of comprehensive guidelines for preventive services for women." IOM Report at 2, AR at 300.
9. On July 19, 2011, the IOM Committee released a report entitled "Clinical Preventive Services for Women: Closing the Gaps 19-20, 109 (2011) ("IOM Report") (AR at 317-18).
10. The IOM Report recommended that the HRSA guidelines include, among other things, "the full range of [FDA]-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity" ("Preventive Services"). IOM Report at 10-12, AR at 308-10.

11. FDA-approved contraceptive methods include diaphragms, oral contraceptive pills, emergency contraceptives (such as Plan B and Ella), and intrauterine devices ("IUDs"). *See id.* at 105, AR at 403.
12. The IOM Report included a dissent from Committee member Anthony Lo Sasso.
13. On August 1, 2011, HHS issued a press release announcing that it would adopt the recommendations of the IOM Report. U.S. Dept. of Health and Human Services, "Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost," *available at* http://www.hhs.gov/news/press/2011pres/08/20110801b.html.
14. Also on August 1, 2011, HRSA adopted guidelines consistent with IOM's recommendations, encompassing all FDA-approved "contraceptive methods, sterilization procedures, and patient education and counseling," as prescribed by a health care provider, subject to an exemption relating to certain religious employers authorized by regulations issued that same day (the "2011 amended interim final regulations"). See HRSA, Women's Preventive Services: Required Health Plan Coverage Guidelines ("HRSA Guidelines"), AR at 283-84.
15. In August 2011, Defendants issued interim final rules implementing the statutory requirement that group health plans provide coverage for women's "preventive care and screenings as provided for in comprehensive guidelines supported by [HRSA]." 76 Fed. Reg. 46,621, 46,623 (Aug. 3, 2011).

16. The August 2011 interim final rules also amended the July 19, 2010 to provide HRSA additional discretion to exempt "religious employers" from the contraceptive coverage requirement. *Id.*
17. To qualify for the religious employer exemption contained in the 2011 amended interim final regulations, an employer had to meet the following criteria:
    a. The inculcation of religious values is the purpose of the organization;
    b. the organization primarily employs persons who share the religious tenets of the organization;
    c. the organization serves primarily persons who share the religious tenets of the organization; and
    d. the organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

Id. at 46,623, AR at 220.

18. Defendants sought "to provide for a religious accommodation that respects the unique relationship between a house of worship and its employees in ministerial positions." *Id.*
19. In February 2012, the Government "finalize[d], without change," the exemption as originally proposed in the August 2011 interim final rules. 77 Fed. Reg. at 8,729 (Feb. 15, 2012).
20. In February 2012, the Government also created a "one-year safe harbor from enforcement" for non-

grandfathered group health plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage. *See* 77 Fed. Reg. 8725, 8726-28 (Feb. 15, 2012), AR at 213-14.

21. The Government undertook a new rulemaking during the safe harbor period to adopt new regulations applicable to non-grandfathered non-profit religious organizations with religious objections to covering Preventive Services. *Id.* at 8728, AR at 215.

22. On March 21, 2012, the Government issued an Advance Notice of Proposed Rulemaking ("ANPRM") that stated it was part of Defendants effort "to develop alternative ways of providing contraceptive coverage without cost sharing in order to accommodate non-exempt, non-profit religious organizations with religious objections to such coverage." 77 Fed. Reg. 16,501, 16,503 (Mar. 21, 2012).

(2) Rulemaking from February to July 2013

23. On February 1, 2013, Defendants issued a Notice of Proposed Rulemaking ("NPRM"), setting forth a proposal that stated it was to "amend the criteria for the religious employer exemption to ensure that an otherwise exempt employer plan is not disqualified because the employer's purposes extend beyond the inculcation of religious values or because the employer serves or hires people of different religious faiths," and to "establish accommodations for health coverage established or maintained by eligible organizations, or arranged by eligible organizations that are religious institutions of higher education, with religious

objections to contraceptive coverage." *See* 78 Fed. Reg. 8456 (Feb. 6, 2013).

24. Defendants received over 400,000 comments (many of them standardized form letters) in response to the proposals set forth in the NPRM. 78 Fed. Reg. 39,870, 39,872 (July 2, 2013).

25. On June 28, 2013, the Government issued final rules adopting and/or modifying proposals in the NPRM. *See* 78 Fed. Reg. 39,870 ("Final Rule").

26. The regulations challenged here (the "2013 final rules") include the new regulations issued by the Government and applicable to non-grandfathered non-profit religious organizations with religious objections to covering Preventive Services. *See* 78 Fed. Reg. 39,870, AR at 1-31; *see also* 77 Fed. Reg. 16,501 (ANPRM), AR at 186-93; 78 Fed. Reg. 8456 (NPRM), AR at 165-85.

a. The 2013 Final Rules' Religious Employer Exemption

27. The Final Rule states that it "simplif[ied] and clarif[ied] the definition of "religious employer." 78 Fed. Reg. at 39,871.

28. Under the new definition, an exempt "religious employer" is "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 78 Fed. Reg. 39874 (codified at 45 CFR § 147.131(a)).

29. The groups that are "referred] to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code," are:

a. (i) "churches, their integrated auxiliaries, and conventions or associations of churches," and

b. "(iii) the exclusively religious activities of any religious order."

26 U.S.C. § 6033(a)(3)(A)(i) or (iii).

30. Section 6033 of the Internal Revenue Code addresses whether and when nonprofit entities that are exempt from paying taxes under the Code must file "annual information [tax] return[s]." 26 C.F.R. § 1.6033-2(a).

31. The new definition of "religious employer" does "not expand the universe of religious employers that qualify for the exemption beyond that which was intended in the 2012 final regulations." 78 Fed. Reg. at 39,874 (citing 78 Fed. Reg. 8461).

32. Entities that are included in Section 6033(a)(3)(A) are exempt from filing an annual Form 990 with the IRS.

33. The IRS has developed a non-exhaustive list of fourteen facts and circumstances that may be considered, in addition to "any other facts and circumstances that may bear upon the organization's claim for church status," in assessing whether an organization is a "church" under section 6033(a)(3)(A)(i) of the Internal Revenue Code, *see Foundation of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed. Cl. 2009); Internal Revenue Manual 7.26.2.2.4, which includes a determination of whether the group has:

a. "a recognized creed and form of worship,"

b. "a definite and distinct ecclesiastical government,"

c. "a formal code of doctrine and discipline,"

d. "a distinct religious history,"

e. "an organization of ordained ministers"

f. "a literature of its own,"

g. "established places of worship,"

h. "regular congregations,

i. "regular religious services,"

j. "Sunday schools for the religious instruction of the young," and

k. "schools for the preparation of its ministers." *Id.*

34. In 26 C.F.R. § 1.6033-2(h), the Treasury Regulations provide a 3-factor test to determine whether a group is an "integrated auxiliary" under section 6033(a)(3)(A)(i) of the Internal Revenue Code. The organization must be:

a. "Described in both sections 501(c)(3) and 509(a)(1), (2), or (3);"

b. "Affiliated with a church or a convention or association of churches;" and

c. "Internally supported."

35. An organization is internally supported includes only if it:

a. "Offers admissions, goods, services or facilities for sale," only "on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an

insubstantial portion of the cost); and"

b. "Normally receives" 50 percent or less "of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses."

36. An entity's eligibility for exemption as a religious employer is determined on an employer-by-employer basis. *See* 78 Fed. Reg. at 39,886.

37. An entity that offers a health plan to its employees that is administered by a qualified religious employer must independently qualify for the religious employer exemption to be exempt. 78 Fed. Reg. 39,886; *see also* 78 Fed. Reg. at 8456, 8463.

38. The 2013 final rules' amendments to the religious employer exemption apply to group health plans and group health insurance issuers for plan years beginning on or after August 1, 2013, *see id.* at 39,871, AR at 3.

b. The 2013 Final Rules' "Accommodation"

39. The 2013 final rules establish regulations regarding the contraceptive coverage requirement for group health plans established or maintained by "eligible organizations." 78 Fed. Reg. at 39,875-80, AR at 7-12; 45 C.F.R. § 147.131(b).

40. An "eligible organization" is an organization that satisfies the following criteria:

    a. The organization opposes providing coverage for some or all of any contraceptive services required to be covered under § 147.130(a)(1)(iv) on account of religious objections.

    b. The organization is organized and operates as a nonprofit entity.

    c. The organization holds itself out as a religious organization.

    d. The organization self-certifies, in a form and manner specified by the Secretary, that it satisfies the criteria in paragraphs (b)(1) through (3) of this section, and makes such self-certification available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (c) of this section applies.

45 C.F.R. § 147.131(b); *see also* 78 Fed. Reg. at 39,874-75, AR at 6-7.

41. The 2013 final rules state that an eligible organization is not required "to contract, arrange, pay, or refer for contraceptive coverage" to which it has religious objections. 78 Fed. Reg. at 39,874, AR at 6.

42. To be relieved of the obligations that otherwise apply to non-grandfathered non-exempt employers, the 2013 final rules require that an eligible organization complete a self-certification form, certifying that it is an eligible organization and

provide a copy of that self-certification to its insurer or TPA. *Id.* at 39,878-79.

43. For self-insured organizations, the self-certification "will afford the [TPA] notice of [its] obligations" under the 2013 final rules, "and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA." 78 Fed. Reg. at 39,879.

44. Section 3(16) of ERISA provides the definition of "administrator" under ERISA. 29 U.S.C. § 1002(16).

45. Under the 2013 final rules, in the case of an eligible organization with a self-insured group health plan, the organization's TPA, upon receipt of the self-certification, will provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan without cost-sharing, premium, fee, or other charge to plan participants or beneficiaries, or to the eligible organization or its plan. *See id.* at 39,879-80, AR at 11 12; 26 C.F.R. § 54.9816-2713A(b)(2), (c)(2).

46. Under the 2013 final rules, costs incurred by TPAs relating to the coverage of Preventive Services for employees of eligible organizations will be reimbursed through an adjustment to Federally-facilitated Exchange (FFE) user fees. *See* 78 Fed. Reg. at 39,880, AR at 12.

47 The payments for Preventive Services required by the challenged regulations applicable to employer-sponsored health insurance plans are available to an employee only while the employee is on an organization's health plan. 29 C.F.R. § 2590.715-2713; 45 C.F.R. § 147.131(c)(2)(i)(B).

48. Self-insured religious employers and eligible organizations are prohibited from "directly or indirectly, seek[ing] to influence the[ir] third party administrator's decision" to provide or procure Preventive Services. 26 C.F.R. § 54.9815-2713.

49. The 2013 final rules' "accommodation" applies to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014. *See id.* at 39,872, AR at 4.

(3) Enforcement of the Regulations

50. Federal law provides four mechanisms to enforce the challenged regulations:

    a. Certain employers whose group health plans fail to provide certain required coverage may be subject to a penalty of $100 a day per affected beneficiary. *See* 26 U.S.C. § 4980D(b).

    b. Participants in ERISA-covered plans can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B), and an action for other appropriate equitable relief to address violations of ERISA or plan terms, 29 U.S.C. § 1132(a).

    c. The Secretary of Labor may bring an enforcement action against ERISA-covered group health plans of employers that violate the challenged regulations, as incorporated by ERISA. *See* 29 U.S.C. § 1132(a)(5), (b)(3).

d. The Secretary of HHS may impose a civil monetary penalty on insurers that provide group health plans that fail to provide certain required coverage. 42 U.S.C. § 300gg-22(b)(2)(C)(i).

51. Federal law also provides that certain employers who do not offer "minimum essential coverage" are subject to an assessable payment approximately equal to an annual amount of $2,000 per full time employee, after the first 30 employees, provided that at least one of its full-time employees enrolls in a qualified health plan through a federal Exchange and qualifies for the premium tax credit or cost sharing reductions. *See* 26 U.S.C. § 4980H(a), (c)(1).

II. PLAINTIFF-SPECIFIC FACTS

A. *Persico* Plaintiffs

52. For purposes of ruling on Plaintiffs' motion for preliminary injunction, the Government does not contest the declarations of the following individuals:

53. Declaration of Fr. Scott W. Jabo for Erie Catholic Preparatory School. (Ex. 1.)

54. Declaration of Mary Maxwell for St. Martin Center, Inc. and Prince of Peace Center, Inc. (Ex. 2.)

55. Declaration of David J. Murphy for the Roman Catholic Diocese of Erie, St. Martin Center, Inc., Price of Peace Center, Inc., and Erie Catholic Preparatory School. (Ex.3.)

56. Declaration of Fr. Scott Detisch for the Roman Catholic Diocese of Erie, St. Martin Center, Inc.,

Price of Peace Center, Inc., and Erie Catholic Preparatory School (Ex.4.)

(1) Diocese of Erie

57. The Diocese encompasses thirteen counties in Northwestern Pennsylvania.
58. The Diocese carries out its Christ-centered mission in three main ways:
59. by educating children within the Diocese;
60. by promoting spiritual growth, including conducting religious services, operating seminaries and hosting religious orders.
61. through community service.
62. The Diocese operates thirty elementary schools, three middle schools, and six secondary schools, which educate over 6,400 students.
63. The Diocese educates students of all religions and offers tuition assistance for students who otherwise would have no alternative to the public school system.
64. Tuition assistance determinations made for Diocesan students are based solely on financial need.
65. The Diocese consists of 117 parishes serving a thirteen-county region, including a Catholic population of approximately 187,500 people.
66. Geographically, it is the largest diocese in Pennsylvania.
67. Bishop Persico publishes FAITH Magazine of the Catholic Diocese of Erie, the largest family publication in Northwestern Pennsylvania.
68. FAITH Magazine is mailed to approximately 62,000 households in all thirteen counties of Northwestern Pennsylvania and focuses on religious issues, but also on other international,

national, and local news. "The magazine is designed to touch the hearts of people both within and outside of the faith." About Us, FAITH Magazine, *available at* http://www.eriercd.org/faithabout.asp.

69. The Diocese serves many more thousands of Northwestern Pennsylvania residents through its social service arms.

70. Many Northwestern Pennsylvania residents are served by the Diocese's prison ministry, family ministry, disability ministry, international Diocesan missions, various respect life organizations, pregnancy counseling services, work with new mothers, and the numerous secular and religious charities that receive the Diocese's financial support, including:

71. *St. Elizabeth Center*, a food pantry, thrift store, and clothing shop for low-income individuals;

72. *The Good Samaritan Center*, a shelter for homeless men and provider of an emergency one-family apartment and other emergency assistance;

73. *Better Homes for Erie*, a provider of affordable housing to low-income families; and

74. *Catholic Charities Counseling and Adoption Services*, a provider of professional counseling, adoption counseling, pregnancy counseling, and refugee resettlement services.

75. These social service programs, which receive support from the Diocese, provide aid to approximately 56,000 people per year.

76. Many of the individuals being served through these charitable programs would be without food, shelter, and other necessary services without the support of the Diocese.

77. The Diocese would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

(2) Prince of Peace Center, Inc. and St. Martin Center, Inc.

78. Plaintiff Prince of Peace Center is a nonprofit, social service organization which provides various social and self-sufficiency services to the needy in the greater Mercer County community.

79. Plaintiff St. Martin Center is a nonprofit, social service organization which has been providing individuals and families with resources to gain self-sufficiency for the last 50 years.

80. The services offered by Prince of Peace Center include:

81. *Family support services* through the HOPE Advocacy program (Help and Opportunity for Personal Empowerment) and Project RUTH (Resources, Understanding, Training, and Homes). HOPE Advocacy is a long term support program (for up to 24 months) for individuals and families struggling with poverty. Project RUTH is a transitional housing program for single parents and their children, who meet the U.S. Department of Housing and Urban Development's definition of homeless. All of the individuals served by HOPE Advocacy and Project RUTH are given the opportunity to learn basic life skills necessary for self-sufficiency and family stability through intensive case management and monthly support groups. The case managers work closely with all participants and offer educational, supportive, and advocacy services.

82. *Emergency Assistance programs*, which provide food, clothing, furniture, appliances, and more to those in need at little to no cost. Prince of Peace Center's Emergency Assistance programs are funded by private donations. Through such donations, Prince of Peace Center is able to offer over $50,000 yearly to help the needy pay utility bills and offer any other necessary support to ensure that family units remain intact. As part of its Emergency Assistance Program, Prince of Peace Center runs a program entitled AWESOME (Assistance With Education, Shelter, Organization, Money management, and Employment). The AWESOME program is geared towards single men and women who have children and wish to attain self-sufficiency. The AWESOME program classes cover a variety of topics, including proper nutrition, decision making, and financial planning. Anyone who attends the AWESOME program classes is eligible for an emergency stipend towards payment of a utility bill.
83. *Mission Thrift Store* ("the Thrift Store"), which provides items such as clothing and furniture to the community at a low cost. The Thrift Store does not turn away anyone in need and supplies items to such individuals at no cost. The Thrift Store operates at a significant loss each year, but the mission of the store is to serve all in need, not to focus on sales or money.
84. *PA WORKWEAR*, a program which provides the needy with clothing, accessories, and training to prepare for job interviews. Those who successfully obtain employment are entitled to receive five additional days of work appropriate attire so that

they can continue to present a professional image at their job.

85. *Neighborhood Meal*, a soup kitchen, which provides two meals per week to the needy. The soup kitchen serves approximately 5,700 individuals per year. The needy can come to the soup kitchen for Thanksgiving and Christmas dinner. Also, Prince of Peace Center sponsors Food Day, a program where the needy receive a monthly food distribution of groceries to supplement food stamps. An average of approximately 700 individuals receive food through this program each month.

86. *Computer classes* for adults and seniors. Students who pass the class receive a free donated and refurbished computer.

87. *Various programs and charity drives* for disadvantaged children in the Mercer County community are held throughout the year, including a Christmas toy drive, Easter egg hunt, and school supplies and school clothing drive.

88. The services provided by St. Martin Center include:

89. *Social services*: an in-house pantry; vouchers for clothing items; assistance for rent, mortgage, and utility payments; assistance for obtaining life-sustaining prescriptions; vouchers for bus passes and gasoline; and guidance for creating a budget. Also, through St. Martin's Bishop's Breakfast Program, the needy in the community receive a hot breakfast every weekday.

90. *Housing services*: counseling for potential homebuyers; fair housing and predatory lending education; lead paint education; and foreclosure

prevention counseling. Also, through the HOME Investment Partnership Program, first-time homebuyers can receive funds to bring a home into compliance with building codes.

91. *An Early Learning Center*, which serves as a preschool and provider of before and after school care. Childcare tuition assistance is available at the Early Learning Center.

92. *Hospitality Industry Training* to teach workforce kitchen skills to the underemployed, unemployed, and many resettled refugees. St. Martin Center provides hands-on experience to such individuals through its catering program, Catering on Parade; and

93. *PA WORKWEAR*, a provider of men's clothing for interviewing and entering the workforce.

94. The majority of the individuals served by Prince of Peace Center and St. Martin Center are below the poverty line and would be without food and shelter, and other necessary services if not for the Prince of Peace Center and St. Martin Center.

95. Prince of Peace Center and St. Martin Center would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

(3) Erie Catholic Preparatory School

96. Erie Catholic Preparatory School is an affiliated corporation of the Diocese.

97. The Diocese directly oversees the management of Erie Catholic Preparatory School.

98. Erie Catholic Preparatory School was formed in 2010 by a merger between the formerly co-educational, but now all-female Villa Maria

Academy and the all-male Cathedral Preparatory School.

99. Villa Maria Academy and Cathedral Preparatory School, which together form Erie Catholic Preparatory School, have separate single-sex campuses.

100. In the early 1890's, Father Thomas Casey donated property for a school for females to be operated by the Sisters of St. Joseph. This institution soon became known as Villa Maria Academy.

101. Villa Maria Academy is the oldest of the three Catholic high schools in Erie.

102. The original Cathedral Preparatory School for Boys was formed in 1921 by Bishop John Mark Gannon recognizing that "[m]any Catholics, although highly intelligent and deserving, were denied the chance to receive a preparatory education because they were poor."

103. Its vision is "[s]teeped in Gospel values and the mission of the Catholic Church, Cathedral Preparatory School and Villa Maria Academy will excel as a teaching and learning community fostering service, strong moral character, global leadership, and esteemed academic success."

104. As part of the spiritual life at Erie Catholic Preparatory School, mass is celebrated daily.

105. Students of Erie Catholic Preparatory School are required to take four years of Theology.

106. Each year, students are required to complete a service project including verification of 25 hours of qualified community service and a reflection component.

107. Erie Catholic Preparatory School offers religious retreats and publicizes volunteer opportunities for its students.

108. Erie Catholic Preparatory School currently has approximately 870 students, with approximately 550 students attending Cathedral Preparatory School and approximately 320 students attending Villa Maria Academy.

109. In 2013, 100 percent of Cathedral Preparatory School's 143 graduates were accepted to four-year colleges.

110. In the past two years, 96 percent of Villa Maria Academy graduates enrolled in a college or university.

111. The Diocese offers financial aid to students of Erie Catholic Preparatory School through the Bishop Assistance plan and the STAR Foundation.

112. Erie Catholic Prep is exempt from filing Form 990. 26 C.F.R. § 1.6033-2(g)(vii)

113. Erie Catholic Prep is not exempt from the challenged regulations because it is not an "integrated auxiliary" under the definition in 26 C.F.R. § 1.6033-2(h).

B. *Zubik* Plaintiffs

114. For purposes of ruling on Plaintiffs' motion for preliminary injunction, the Government does not contest the declarations of the following individuals:

115. Declaration of Susan Rauscher for Catholic Charities of the Diocese of Pittsburgh, Inc. (Ex. 5.)

116. Declaration of David S. Stewart for the Roman Catholic Diocese of Pittsburgh and Catholic Charities of the Diocese of Pittsburgh, Inc. (Ex. 6.)

117 Declaration of Fr. Ronald P Lengwin for the Roman Catholic Diocese of Pittsburgh and Catholic Charities of the Diocese of Pittsburgh, Inc. (Ex. 7.)

(1) The Diocese of Pittsburgh

118. The Bishop in his capacity as Bishop of the Diocese also serves as Trustee for 200 parishes and their charitable trusts.

119. The Diocese provides services throughout six counties in Southwestern Pennsylvania—Allegheny, Beaver, Butler, Greene, Lawrence, and Washington Counties—including a Catholic population of approximately 700,000 people.

120. The Bishop also oversees the multifaceted mission of spiritual, educational, and social service to residents of this six-county region, Catholic and non-Catholic alike.

121. The Diocese serves the community through its affiliated Catholic schools.

122. The Diocese's Catholic schools include approximately 11 high schools, 66 elementary schools, two non-residential schools for individuals with disabilities, and various preschool programs.

123. The Diocese's schools educate approximately 22,000 students.

124. Only three school districts in the entire Commonwealth of Pennsylvania educate more children than the Diocese.

125. The Diocesan schools are open to and serve all children, without regard to the students' religion, race, or financial condition.

126. Eight Catholic high schools are affiliated with the Diocese, including Bishop Canevin High School, Central Catholic High School, Cardinal Wuerl North Catholic High School, Oakland Catholic High School,

Quigley Catholic High School, Saint Joseph High School, Serra Catholic High School, and Seton-La Salle Catholic High School.

127. Ninety-nine percent of senior high school students in the Diocesan schools graduate and 97% continue further education after high school.

128. Many of the Diocesan schools are located in districts where the public schools are "failing."

129. The elementary schools within the Diocese are not exclusive to Catholics and educate many minority students. For example, East Catholic, Northside Catholic School, and St. Bartholomew School educate many non-Catholic and minority students. Additionally, Sister Thea Bowman Catholic Academy and St. Benedict the Moor School educate predominantly non-Catholic students.

130. The challenged regulations will result in the elementary schools within the Diocese being treated differently, in that certain elementary schools within the Diocese will be exempt from compliance with the regulations while others will not.

131. The Diocese also provides numerous other social services to the residents of its six-county community. These services are provided without regard to national origin, race, color, sex, religion, age, or disability.

132. The Diocese assists the work of many other local organizations, including organizations that provide support to the homeless, provide scholarships to disadvantaged children of all faiths, and provide counseling and support to struggling families.

133. The Catholic Benefits Trust was formed in June 2013 by an agreement between the Diocese of Pittsburgh, the Diocese of Altoona-Johnstown, and

the Diocese of Greensburg (the "Trust Agreement") in an effort to pool resources with regard to health benefits.

134. The Catholic Benefits Trust provides coverage to "Diocesan Entit[ies]," defined in the Trust Agreement as "any Agency, Parish, School, seminary or other similar entity subject to the supervision, or administrative and pastoral care, of a Diocese."

(2) Catholic Charities of the Diocese of Pittsburgh, Inc.

135. Catholic Charities provides approximately 230,000 acts of service for people in need in Southwestern Pennsylvania.

136. Catholic Charities has approximately 115 employees.

137 Catholic Charities has offices in all six counties that the Diocese serves.

138. Catholic Charities serves the needy, underserved, and underprivileged in countless ways. Its programs and services include adoption, counseling, safety net and stability services, health care for the uninsured, housing and homeless assistance, pregnancy and parenting support, and refugee and senior services. Catholic Charities also maintains crisis pregnancy assistance and post-abortion healing ministries.

139. Each of the county offices of Catholic Charities provides counseling and other support services to pregnant women and new mothers.

140. Catholic Charities offer a post-abortion healing retreat to individuals struggling with the emotional and spiritual pain of abortion.

141. Catholic Charities is able to serve the Southwestern Pennsylvania community through

its "Ambassadors of Hope," the hundreds of men, women, and teens who volunteer their time in support of the various social service programs run by Catholic Charities and answer the call of their faith to serve all in need, regardless of religious affiliation.

142. Through its various social service programs, in 2012, Catholic Charities provided approximately 68,141 meals to the hungry, 14,430 hours of case management to struggling individuals and families, and participated in 16,542 patient visits.

143. Catholic Charities supports additional programs, including: the Catholic Charities Free Health Care Center, St. Joseph House of Hospitality, Team HOPE, and two centers for seniors.

144. Catholic Charities, through its wholly-owned subsidiary the Catholic Charities Free Health Care Center, provides quality medical and dental care at no cost to the working poor.

145. The Free Health Care Center is the only free health care facility of its kind in the Pittsburgh region that serves low or moderate income individuals who do not have employer-sponsored health insurance, cannot afford private insurance, or who do not qualify for Medicaid or other types of assistance.

146. The Catholic Charities Free Health Care Center is critical to that underserved population who typically delay medical and dental visits, thereby magnifying health problems, overburdening emergency rooms, and disrupting their employers' work flow. The free health services provided at the

Catholic Charities Free Health Care Center in 2012 are valued at nearly $1.5 million.

147. Since opening in November 2007, the Catholic Charities Free Health Care Center has provided free, quality preventive and primary care to nearly 15,000 individuals during more than 35,000 patient visits.

148. Like all Catholic Charities' programs, the Free Health Care Center treats clients without discrimination as to their race, religion, sex, national origin, age, or any disability.

149. Catholic Charities also supports a pregnancy and parenting support program throughout the six counties of the Diocese of Pittsburgh. Last year, 2,545 parents accessed these services.

150. Catholic Charities supports Team HOPE (help on the path to empowerment), which provides individualized service plans to help the needy gain independence. In a 2012 audit by Allegheny County, a funder of the program, Team HOPE was congratulated for achieving outstanding results having exceeded in enrollment in the program by 108% and helping 93% of participants in the program find employment in the first 6 months.

151. Catholic Charities supports St. Joseph House of Hospitality, a residential and transitional housing facility located in Pittsburgh's Hill District, which provides rooms, meals, and supportive services to men over 50 who are homeless or at risk for homelessness.

152. Catholic Charities also supports two centers for seniors. One of those centers is Challenges: Options in Aging, a facility located in Lawrence County that provides recreational, social,

protective, and educational services, as well as in-home services, to the aging. This program provided 167,721 acts of service to older individuals in the past calendar year.

153. Donors are the life blood of Catholic Charities and make the mission of Catholic Charities, its programs, and its Free Health Care Center possible.

154. The Diocese provides funding to Catholic Charities, its programs, and the Free Health Care Center.

Dated: November 7, 2013 Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, et al., PLAINTIFFS v KATHLEEN SEBELIUS, et al., DEFENDANTS.	CIVIL ACTION NO. 1:13-00303 JUDGE ARTHUR J. SCHWAB
MOST REVEREND DAVID A. ZUBIK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, et al., PLAINTIFFS, v. KATHLEEN SEBELIUS, et al., DEFENDANTS.	CIVIL ACTION NO. 2:13-cv-01459 JUDGE ARTHUR J. SCHWAB

NOTICE OF FILING OF DEPOSITION TRANSCRIPT FOR CARDINAL TIMOTHY DOLAN

Plaintiffs give notice of filing the following materials as part of the record in the above-captioned matters:

1. The final transcript and exhibits from the deposition of Cardinal Timothy Dolan taken on November 7, 2013 are attached as Exhibit A to this filing.

Dated: November 12, 2013

Respectfully submitted,

/s/ Paul M. Pohl

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, et al., Plaintiffs, v. KATHLEEN SEBELIUS, et al., Defendants.	CIVIL ACTION NO. 1:13-00303
MOST REVEREND DAVID A. ZUBIK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, et al., : Plaintiffs, v. KATHLEEN SEBELIUS, et al., Defendants.	CIVIL ACTION NO. 2:13-cv-01459

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VIDEOTAPED DEPOSITION OF CARDINAL TIMOTHY MICHAEL DOLAN

* * *

November 7, 2013
3:30 p.m.

Reported by:

* * *

[35]

Q. Okay. Now, you've raised, I think in an earlier answer a minute ago, you raised an additional point with respect to the exemption in the regulation for houses of worship and the definitions used in the related regulations for what has been called religious employers. You mentioned the houses of worship.

Now, can you explain for the Court whether the practice of the Catholic faith is limited to just prayer and worship in a house of worship or a church?

[36]

A. It isn't. And it's not just Catholic. I would maintain it's the Christian world view. Jesus said: Let your light shine before the world. So what we do in worship for an hour on Sunday morning is meant to radiate in everything that we do. The last words we hear at Sunday mass in our—we don't use the term "house of worship," but the last word we would hear in our parish church would be: Go live the mass. And when we came back to mass the next Sunday the first thing we do is now call to mind the ways you haven't lived up to what you—what you professed this last week and ask God's mercy.

The crux of religion is what happens on Monday, not what happens on Sunday. We don't call them house—I don't say I belong to the cathedral house of worship. My people would say: I belong to St. Patrick's Cathedral parish, because a parish for a Catholic, yeah, it's—it's worship on Sunday, but it's also the school, it's also the soup kitchen, it's also the homeless shelter, it's also the—the food bank. It's

everything that we do as followers of Jesus Christ. To separate that from worship is, first of all, would be contrary to our view of what Our Lord intended, and, secondly, is no business of government to make that distinction.

[37]

Q. So, in view of those factors you just outlined, do the new definitions being used in the preventive services mandate in connection with religious employers who are exempt and those who can seek an accommodation, does that adversely affect the Catholic Church?

MR. HUMPHREYS: Objection; leading.

Q. Or not?

A. I'm sorry, the—

Q. Does this new definition that splits houses of worship off from other Catholic organizations that practice their faith in other ways, does that impact the Catholic Church adversely at all?

A. Sure, it does. You want me to give examples?

Q. Please.

A. Yeah. Now, so, what, in the exemption the secretary at the parish is going to be exempt. The one that works in the—in the soup kitchen is not. Now, that's—that's a distinction that is alien to us as believers and that's a distinction that we bristle at the government telling us is—is one that we have to live by.

Q. Is this the first time, to your

[38]

knowledge, that the U.S. Government has sought to split the exercise of the Catholic or Christian faith in this fashion?

A. I like the word "free exercise." You're the lawyers at the table; you know more about it than I do. But I like the word "free exercise" Okay. So we're talking about exercising our faith. I think the Constitution uses freedom of religion and not freedom of worship. I don't know. I think it's—it's freedom of religion. And that to us means everything. That's your daily life. That's everything we do, dream, believe, breathe, wake, sleep, is our—is our faith.

And to your direct question, I'm unaware of any time the Government of the United States has ever tried to make that distinction. In fact, as a historian of the Catholic Church of the United States, that's one of the reasons my ancestors came here, is because this was a country that said we will respect the sanctuary of conscience and we don't have any business defining your religion for you.

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND DAVID A. ZUBIK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, *et al.*,	:	**Civil Action No.**
Plaintiffs	:	**ELECTRONICALLY FILED**
v.	:	
KATHLEEN SEBELIUS, *et al.*,	:	
Defendants.	:	

DECLARATION OF SUSAN RAUSCHER FOR CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC.

I, Susan Rauscher, pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am employed as the Executive Director of Catholic Charities of the Diocese of Pittsburgh, Inc. ("Catholic Charities"). I have been so employed since 2008. Prior to that time, I was employed as the

Secretary for Social Concerns for the Roman Catholic Diocese of Pittsburgh.

3. Based upon my job responsibilities and experience, I am personally familiar with employee relations at Catholic Charities, including benefit packages offered to employees.

4. Additionally, based on my job responsibilities and experience, I am personally familiar with the role of the Bishop and the Diocese in overseeing the Membership Board of Catholic Charities, an affiliated non-profit corporation of the Diocese. Catholic Charities is run by a Membership Board, which oversees a Board of Directors to manage the daily affairs of the corporation. Catholic Charities is an integral entity within the Diocese, as the primary social service agency of the Diocese under the leadership of the Bishop. The Diocesan Bishop, Vicar General of the Diocese, and an appointed priest representative from each county all serve on the Membership Board of Catholic Charities. The Bishop serves as Chairman of the Membership Board. Catholic Charities is therefore required to adhere to Catholic doctrine at all times and in all manners.

5. I am also personally familiar with the social services that Catholic Charities provides throughout Southwestern Pennsylvania and the resources necessary to sustain those social services.

6. The facts set forth herein are based upon my personal knowledge and information available to me in the above-referenced capacity, and if I were called upon to testify to them, I could and would competently do so.

I. *Catholic Charities' Health Plan*

7 Catholic Charities currently provides health insurance coverage to approximately 80 full-time employees and their dependants (for a total of approximately 300 insured individuals) through one of the Diocese's current employee health plan options ("Catholic Charities' Health Plan") that is self-insured by the Diocese through the Catholic Benefits Trust (the "Trust"). Third-party administrators ("TPAs") Highmark Inc. and UPMC administer that plan.

8. Catholic Charities' Health Plan complies with Catholic teachings on abortion-inducing products, sterilization, and contraception ("objectionable services"). Specifically, abortion and sterilization are not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, all of the plans provide coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

9. Catholic Charities' health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan.

10. Catholic Charities' next plan year begins on January 1, 2014 with open enrollment beginning November 1, 2013.

II. *Injuries Related To The Final Rule*

11. The regulations at issue in this lawsuit (the "Mandate"), including the final rule issued by Defendants on June 28, 2013 (the "Final Rule"), injure Catholic Charities. Pursuant to the Final

Rule, Catholic Charities is not exempt from compliance with the Mandate. As a result, Catholic Charities may be forced to, on pain of substantial financial penalties, violate its sincerely-held religious beliefs by facilitating access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through its employee health plans.

12. The originally proposed regulations allowed Catholic organizations such as Catholic Charities, which provides health insurance to its employees through the health plan of an affiliated, exempt "religious employer" (here, the Diocesan health plan), to receive the benefit of that exemption regardless of whether the entity independently qualified as a "religious employers." However, the Final Rule eliminates that safeguard.

13. The so-called "accommodation" in the Final Rule for nonexempt religiously affiliated entities like Catholic Charities does not resolve Catholic Charities' religious objection to compliance with the Mandate. The Mandate, even in its revised form, forces Catholic Charities to facilitate access to products and services the use of which is antithetical to the Catholic faith. Catholic Charities' employees will only receive "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services by virtue of the employees' participation in an insurance plan offered by Catholic Charities. In its final form, the Mandate requires Catholic Charities to authorize the TPA of the Diocesan health plan to pay for the provision of the objectionable services for its employees, despite—and indeed as a consequence of—Catholic Charities'

religious objection to the Mandate. In other words, Catholic Charities' decision to provide a group health plan will trigger the provision of objectionable services to its employees in a manner contrary to its religious beliefs.

14. Additionally, by signing the self-certification form, Catholic Charities is designating Plaintiffs' TPA as its plan administrator for the provision of the objectionable services.

15. If the Diocese is forced to expel Catholic Charities from its health plan to avoid sponsoring a health insurance plan that provides access to "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services, Catholic Charities would have to obtain health insurance for its employees on its own, while still facilitating the provision of these objectionable services or facing punitive fines.

16. This injury strikes at the core of Catholic Charities' mission of providing good works to those in need. Catholic Charities has a responsibility to bear witness to the Church's teachings, particularly as they are defined by the Diocese. Catholic Charities and its employees bear witness to those teachings not only by word, but primarily by deed. If Catholic Charities were to provide health insurance plans that trigger the provision of objectionable services to its employees in compliance with the Mandate, Catholic Charities would be forced to act in a way inconsistent with the very teachings of the Roman Catholic Church. Catholic Charities cannot bear witness to its teachings and at the same time act in a way that

thwarts the transmission of life. Catholic Charities will not, in short, be able to practice what it preaches.

17 Compliance with the Mandate—and, specifically, facilitating the provision of objectionable services—is also contrary to Catholic Charities' beliefs regardless of whether it directly funds the provision of these objectionable services. Any use of Catholic Charities' funds to comply with the Mandate, including through increased premiums or other costs associated with the provision of objectionable services, to provide the mandated products and services would only exacerbate the violation of its religious beliefs.

18. Further, as I understand it, the manner in which the Mandate achieves the cost-savings necessary for it to operate effectively is predicated on the Government's prediction of a decrease in the number of births due to a predicted increase in the number of individuals utilizing the products and services that Catholic Charities finds objectionable. The Mandate thus forces Catholic Charities to not only directly facilitate access to objectionable products and services, but also to participate in a government scheme specifically designed to thwart the transmission of life contrary to its religious beliefs.

19. Additionally, Catholic Charities believes that contraception is immoral, and by expressing that conviction it routinely seeks to "influence" or persuade their fellow citizens of that view. It is violative of Catholic Charities' religious beliefs to force it to facilitate counseling seeking to influence or educate citizens regarding services which are

contrary to Catholic doctrine, including abortion-inducing drugs, sterilization services, and contraceptives.

20. In sum, the Mandate violates Roman Catholic doctrine and Catholic Charities' sincerely-held religious beliefs and mission. It thus violates a core foundational principle of our country which protects the freedom of religion.

21. Finally, the Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable component, the former which receives the exemption and the latter which does not-preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an essential component of the Catholic faith, however, worship cannot be separated from providing good works, which are also essential and integral components of the Catholic faith and are at the heart of the mission of Catholic Church.

III. *Catholic Charities Is Currently Preparing For Enforcement Of The Mandate Starting January 1, 2014*

22. Catholic Charities and its Membership Board, of which the Bishop is Chairman, is presently being forced to consider whether to: (1) drop its employee health plan; (2) offer coverage for the objectionable services in violation of Catholic beliefs; or (3) incur penalties for refusing to self-certify and offer the objectionable coverage.

23. Catholic Charities' Membership Board is currently considering whether to sign the

self-certification. The Board is aware that Catholic Charities is between a rock and a hard place in that failure to sign the self-certification will mean that it must comply with the Mandate without any accommodation. Thus, whether or not Catholic Charities signs the self-certification, it will still be faced with a forced violation of its religious beliefs. Catholic Charities, as a Catholic institution under the leadership of Bishop Zubik, cannot act in a manner inconsistent with Catholic doctrine.

24. Executives at Catholic Charities are planning to meet with their employees to discuss benefits in late October and, at that point, will have to know what benefits will be offered starting January 1, 2014.

IV. *Harm To Catholic Charities' Ability To Provide Public Health Services To Those In Need*

25. Through its Free Health Care Center and Roselia program, Catholic Charities provides significant public health services in the greater Pittsburgh community. For example, Catholic Charities provides pregnancy and parenting support through its Roselia program, which provides care and counseling for women who are in need and pregnant or parenting.

26. In addition to the services that Catholic Charities offers to mothers and pregnant women, it provides free health care services to those in need. For example, the Free Health Care Center provides free, quality primary and preventative medical and dental care to the working poor. The free health care services provided at the Center in 2012 are valued at

nearly $1.5 million. The people that Catholic Charities serves at the Free Health Care Center do not qualify for Medicaid or other government assistance and cannot afford health insurance.

27. Without a workable alternative for religious objectors to the Mandate, many people in the greater Pittsburgh area risk losing the access to the counseling, medical, and dental services that Catholic Charities and its Free Health Care Center provide.

28. Catholic Charities has approximately 115 benefits-eligible employees. If it ceases offering employee health plans or fails to provide the required coverage, Catholic Charities would face fines of $2,000 per employee after the first 30 employees per year or $100 per individual per day. Such fines against Catholic Charities would close its doors, denying thousands in the local community its charitable services.

29. As a result, donations are likely to drop in that donors will be concerned about the continued operation of Catholic Charities if it is subject to fines for noncompliance with the Mandate.

30. The generous employee benefits provided by Catholic Charities, including Catholic Charities' Health Plan, are a significant factor in employee retention. Catholic Charities has been in direct communication with its employees since August 2011 about the possible effects of the Mandate. Based on that dialogue with its employees, Catholic Charities has a significant fear that dropping its generous employee health plan would likely lead to the departure of many valued, creative, irreplaceable, and highly effective staff.

I hereby certify under penalty of perjury that the foregoing is true and correct.

/s/ Susan Rauscher
Susan Rauscher

Executed on: September 30, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND DAVID A. ZUBICK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, *et al.*,	**Civil Action No.**
Plaintiffs,	**ELECTRONICALLY FILED**
v.	
KATHLEEN SEBELIUS, *et al.*,	
Defendants.	

DECLARATION OF DAVID S. STEWART FOR THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH AND CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC.

I, David S. Stewart, A.R.M., pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am employed as the Risk/Benefits Manager for the Roman Catholic Diocese of Pittsburgh (the

"Diocese"). I have been so employed since 1991. I have been employed by the Diocese since 1982 when I began my career in the Financial Services Office.

3. Based upon my job responsibilities and experience, I am personally familiar with planning and budgeting relating to health benefits for the Diocese and Catholic Charities of the Diocese of Pittsburgh, Inc. ("Catholic Charities") (hereinafter collectively, "Plaintiffs").

I. *Diocesan Health Plan*

4. The Diocese of Pittsburgh operates a self-insured health plan through the Catholic Benefits Trust (or the "Trust").

5. The Dioceses of Pittsburgh, Altoona-Johnstown, and Greensburg are the Beneficial Owners of the Catholic Benefits Trust, which is split into three series: the Pittsburgh series, the Altoona-Johnstown series, and the Greensburg series. Each Diocese is sole "Beneficial Owner" and sole beneficiary of its respective series. Accordingly, the Diocese of Pittsburgh is the sole Beneficial Owner and sole beneficiary of the Pittsburgh series of the Trust.

6. The Diocese currently provides health insurance coverage to approximately 130 full-time employees and their dependants, for a total of approximately 200 insured individuals. The Diocese provides its employees eight insurance plan options, all of which are self-insured through the Catholic Benefits Trust. Third-party administrators ("TPAs") Highmark Inc. and UPMC each administer four of the plans.

7 The Diocese offers a separate health plan for the employees of Catholic Charities.

8. In total, approximately 3,600 individuals are insured through the Pittsburgh series of the Trust. This includes employees of Catholic Charities, and other organizations affiliated with the Diocese, as well as their dependents.

9. All of the Diocese's current employee health plan options comply with Catholic teachings on abortion-inducing drugs, sterilization services, contraceptives, and related counseling services ("objectionable services"). Specifically, abortion and sterilization are not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, all of the plans provide coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

10. The health plans that the Diocese offers its employees and the employees of its affiliates—Catholic Charities excluded—are all "grandfathered." The Diocese has included a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).

11. The Diocese cannot make necessary changes to its plans without losing grandfathered status. For example, a parish that is struggling financially declined to raise employee contributions out of fear of losing grandfathered status. As a result, the Diocese and its affiliated entities are foregoing conservatively $900,000 annually in additional funds to stay

grandfathered—funds they could otherwise use in providing their charitable services.

12. The next plan year for all health plans offered through the Diocese begins on January 1, 2014. Accordingly, all Plaintiffs must be prepared to comply with the regulations at issue in this lawsuit by January 1, 2014.

II. *The Diocese Is Forced To Facilitate Coverage Of The Objectionable Services*

13. Consistent with Church teachings regarding the sanctity of life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

14. In the past, the Diocese has notified its TPA that it would not cover the objectionable services. But it never designated the TPA to provide those services for the Diocese or any of its affiliates. And, the Diocese's notification never before triggered the provision of the objectionable services.

15. The regulations at issue in this lawsuit (the "Mandate"), including the final rules issued by Defendants on June 28, 2013 (the "Final Rule"), injure the Diocese by requiring it to facilitate access to the objectionable services.

16. Though the Diocese meets the Mandate's definition of a religious employer and is thus exempt from facilitating access to the objectionable services for its own employees, this exemption does not apply to the employees of nonexempt, affiliated entities, which are insured through the Diocese, including Plaintiff Catholic Charities.

17. The Mandate requires employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans, in violation of Catholic beliefs.

18. As a result, the Diocese, which provides coverage to employees of nonexempt, affiliated entities such as Catholic Charities, is forced to either: (1) provide the employees of Catholic Charities with a separate insurance policy that covers abortion-inducing drugs, contraception, sterilization, and related counseling, or (2) refuse to continue offering coverage to the employees of Catholic Charities thereby forcing Catholic Charities to enter into an arrangement with another insurance provider that will, in turn, provide the objectionable coverage. Either alternative violates the Diocese's sincerely-held religious beliefs, and will jeopardize the ability of the Diocese to continue to operate in its current fashion of providing affordable, quality health insurance. The first option forces the Diocese to act contrary to its sincerely-held religious beliefs. The second option not only makes the Diocese complicit in the provision of objectionable coverage, by forcing Catholic Charities out of its plan and to obtain the objectionable coverage through another insurance provider, but also compels the Diocese to submit to the Government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

19. If the Diocese takes the second option and refuses to continue offering insurance to Catholic Charities, and Catholic Charities does not provide

coverage for the objectionable services, it could be subject to fines which could reduce its ability to provide charitable services.

20. If the Diocese does not expel Catholic Charities from one of its current employee health plans and Catholic Charities fails to self-certify and offer the objectionable services, the Diocese as Beneficial Owner of the Pittsburgh Series of the Catholic Benefits Trust will be liable for any punitive fines leveled against Catholic Charities.

21. The Mandate results in further facilitation harms. Currently, "Catholic Benefits Trust" appears on the health insurance cards of Catholic Charities' employees and their dependents. Accordingly, should the Diocese continue to offer insurance to Catholic Charities, the Diocese will be implicated if an individual insured through Catholic Charities uses their health insurance card to obtain the objectionable services.

22. The Diocese also will have to provide Plaintiffs' TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiff Catholic Charities. Providing these names enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the objectionable services.

23. The Mandate also results in increased administrative burdens for the Diocese. Currently, in addition to offering coverage for both exempt and nonexempt entities, the Diocese, through the Catholic Benefits Trust, provides both grandfathered and

non-grandfathered health plans depending on the entity as issue. The Mandate imposes significant administrative burdens on the Diocese by requiring it to: (1) offer coverage for exempt entities, which offer contraceptive coverage when medically necessary as is consistent with Catholic beliefs; (2) offer coverage for nonexempt entities which then have to comply with the Mandate in violation of Catholic beliefs; and (3) maintain grandfathered status for nonexempt entities to prevent these entities being subject to the Mandate. Administratively, the burdens of this coverage scheme are significant.

III. *Injuries Relating To Past And Current Planning And Time Needed For Future Planning And Budgeting*

24. Injuries relating to altering the Diocesan health plan are imminent and impending. Plaintiffs must have any benefit changes finalized by the next plan year starting on January 1, 2014. Open enrollment will begin in November 2013. Accordingly, in the months leading up to November 2013, the Diocese will begin planning for open enrollment and will notify plan participants of benefit changes. The Diocese must know what benefits it will offer in order to plan for open enrollment.

25. Many analyses, negotiations, and decisions must occur before Plaintiffs can implement health plans for their employees. Plaintiffs have already expended and continue to expend significant personnel hours and costs attempting to discern the scope of the Mandate, the parameters of the religious employer exemption, the qualifications for the safe harbor, and how all of these impact Plaintiffs.

26. If the Diocese no longer offers coverage to Catholic Charities, the Diocese and other entities insured through the Diocese may well have to pay more for health insurance because each organization would be pooling financial resources in a smaller group. Catholic Charities also would have to pay more to obtain its own insurance, should it choose to do so. To the extent the Diocese and Catholic Charities are able to continue providing healthcare to their employees, the benefits would certainly not be as cost-efficient nor as comprehensive as what is currently provided.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ David S. Stewart
David S. Stewart

Executed on: September 27, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND DAVID A. ZUBIK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, *et al.*,	Civil Action No. _____
Plaintiffs	ELECTRONICALLY FILED
v.	
KATHLEEN SEBELIUS, *et al.*,	
Defendants.	

DECLARATION OF FATHER RONALD P. LENGWIN

I, Father Ronald P. Lengwin, pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I currently serve both as Vicar General and General Secretary of the Diocese of the Pittsburgh (the "Diocese").

3. As Vicar General, I serve as the delegate of the Most Reverend David A. Zubik, Bishop of the Roman

Catholic Diocese of Pittsburgh and have authority to act on behalf of the Bishop. The Bishop is final arbiter of ecclesiastic matters in the Diocese. My role as Vicar General includes implementing the Bishop's determinations and analyzing how those determinations impact the Diocese and other entities within the Diocese, such as Plaintiff Catholic Charities of the Diocese of Pittsburgh, Inc. ("Catholic Charities"). As General Secretary, I serve as the spokesman for the Diocese.

4. The Magisterium, which consists of the Pope and the College of Bishops in union with the Pope, decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church's mission in the world, including how that mission occurs within the settings of Catholic agencies and other institutions. Bishop Zubik is responsible for carrying out that mission in the Diocese and is final arbiter of ecclesiastic matters in the Diocese.

5. The Bishop directly oversees the administration of Plaintiff Catholic Charities through representation on its Membership Board. Plaintiff Catholic Charities is run by a Membership Board, which oversees a Board of Directors to manage the daily affairs of the corporation. Catholic Charities is an integral entity within the Diocese, as the primary social service agency of the Diocese under the leadership of the Bishop. The Bishop serves as Chairman of the Membership Board of Catholic Charities. In this role, the Bishop oversees the management of Catholic Charities, and ensures that Catholic Charities adheres to Catholic doctrine at all times and in all manners.

6. In the Bishop's role on the Membership Board, he is ultimately responsible for approving policies of the Board of Directors, including ensuring that all policies comply with Catholic doctrine.

I. *Diocesan Health Plan*

7 The Diocese of Pittsburgh operates a self-insured health plan through the Catholic Benefits Trust (or the "Trust").

8. The Dioceses of Pittsburgh, Altoona-Johnstown, and Greensburg are the Beneficial Owners of the Catholic Benefits Trust, which is split into three series: the Pittsburgh series, the Altoona-Johnstown series, and the Greensburg series. Each Diocese is sole "Beneficial Owner" and sole beneficiary of its respective series. Accordingly, the Diocese of Pittsburgh is the sole Beneficial Owner and sole beneficiary of the Pittsburgh series of the Trust.

9. The Diocese, through the Catholic Benefits Trust, offers health insurance coverage for its employees, in addition to the employees of affiliated entities, such as Catholic Charities.

II. *Plaintiffs' Religious Objections To The Mandate*

10. Catholic religious teaching prohibits subsidizing, providing, and/or facilitating coverage for abortion-inducing drugs, sterilization services, contraceptives, and related counseling services. The term contraceptives refers to artificial contraceptives, as opposed to Natural Family Planning, which is consistent with Catholic teachings. These well-established religious beliefs flow from a unified system of beliefs articulated in the Catechism of the

Catholic Church. One of the central tenets of this system is belief in the sanctity of human life and the dignity of all persons.

11. Thus, Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the "dignity of the human person is rooted in his creation in the image and likeness of God." Catechism of the Catholic Church ¶ 1700.

12. One outgrowth of belief in human life and dignity is Plaintiffs' well-established belief that "[h]uman life must be respected and protected absolutely from the moment of conception." *Id.* ¶ 2270. As a result, Plaintiffs believe that abortion is prohibited and that they cannot facilitate the provision of abortions. *Id.* ¶¶ 2271-72.

13. Furthermore, Plaintiffs adhere to Catholic teachings that prohibit any action which "render[s] procreation impossible" and which, more specifically, regard direct sterilization as "unacceptable." *Id.* ¶¶ 2370, 2399. Plaintiffs also believe that contraception is immoral, and by expressing that conviction they routinely seek to "influence" or persuade their fellow citizens of that view.

14. Consistent with Church teachings regarding the sanctity of human life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

15. The regulations at issue in this lawsuit (the "Mandate"), require employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives,

and related counseling services through their employee health plans. Freedom of religion includes not just freedom to practice religion, but also freedom from coercion by civil authorities that would violate the principles adhered to by a religion.

16. Plaintiffs have determined that the Mandate violates Catholic doctrine and that complying with the Mandate would result in Plaintiffs facilitating the provision of the objectionable services.

17. It violates Plaintiffs' religious beliefs to facilitate the objectionable coverage and services, even if Plaintiffs do not have to contract, arrange, pay, or refer for the objectionable coverage and services.

18. When Plaintiffs are prohibited from engaging in certain conduct, they are equally prohibited from designating or assisting someone else to do it for them. Here, Plaintiffs are themselves prohibited from providing this coverage, including for abortion-inducing drugs which Plaintiffs believe to be a grave moral evil, and are equally prohibited from designating or assisting their third-party administrator ("TPA") in providing the coverage. This constitutes immoral material cooperation in the grave moral evil. This is true even though Plaintiffs do not intend the immoral act, since Plaintiffs are being forced to act with knowledge that a grave moral evil will result from their conduct. In past years, however, there have been no religious violations in informing their TPA of Plaintiffs' religious beliefs because it did not trigger the violation of those beliefs.

19. There is no prohibition in paying a salary to Plaintiffs' employees, even if those employees may use the money to act contrary to Catholic doctrine. But that is completely different from the situation here since it does not constitute material cooperation with a grave immoral act. For example, when the Diocese pays an employee's salary, it does not designate the employee to purchase pornography, does not designate the employee to administer a program that supplies pornography, and does not trigger the provision of pornography.

20. Accordingly, Plaintiffs cannot facilitate coverage for the objectionable services through their TPA nor can the Membership Board of Catholic Charities approve any policies that would result in such facilitation.

21. Moreover, as final arbiter of ecclesiastic matters in the Diocese, the Bishop cannot facilitate coverage of the objectionable services for nonexempt entities, such as Plaintiff Catholic Charities.

III. *Plaintiffs Are Forced To Facilitate Coverage Of The Objectionable Services*

22. The so-called "'accommodation" does not resolve Plaintiffs' religious objection. The Mandate forces Plaintiffs' to facilitate access to products and services antithetical to the Catholic faith.

23. Indeed, it is Catholic Charities' decision to provide group health plans to its employees which results in facilitation of the objectionable services in violation of Plaintiffs' religious beliefs.

24. In order to be eligible for the so-called "accommodation," Plaintiff Catholic Charities must provide a "certification" to Plaintiffs' TPA setting

forth its religious objections to the Mandate. The provision of this "certification," in turn, automatically triggers an obligation on the part of the TPA to provide or obtain the objectionable coverage for the employees of Catholic Charities.

25. The self-certification form also designates the TPA as Catholic Charities' plan administrator for the provision of the objectionable services. Without the self-certification form, the TPA is prohibited from providing coverage for the objectionable services to Catholic Charities' employees.

26. A religious organization's self-certification, therefore, is a trigger and but-for cause of the objectionable coverage. In other words, under the final version of the Mandate, Catholic Charities' decision to participate in the Diocesan health plan triggers the provision of contraceptive benefits to its employees in a manner contrary to its beliefs. This direct causal connection to immoral activity is material cooperation in contravention of Plaintiffs' religious beliefs. Therefore, it is morally improper for Catholic Charities to execute the self-certification, which will result in facilitating the provision of the objectionable services to its employees.

27 While the Diocese is exempt from compliance with the Mandate, both the Bishop and the Diocese will be forced to facilitate coverage for the objectionable services through their participation in the operation of the Catholic Benefits Trust. The Diocese, through the Bishop, has the power to manage, oversee, and direct the Pittsburgh series of the Trust in its role as sole Beneficial Owner and beneficiary of that series. The Bishop and the

Diocese will be forced to facilitate provision of the objectionable services because nonexempt entities currently included in the Trust, such as Plaintiff Catholic Charities, will be forced to comply with the Mandate.

28. The Trust Agreement provides that "each Director" of the Board of Directors of the Trust shall be "appointed by the Bishop of each Diocese that is or becomes a Beneficial Owner" of the Trust. The Board of Directors is then responsible for "[t]he management of the Trust[.]" Thus, the Bishop is forced to appoint a Director to the Board of the Trust with the knowledge that, under the Mandate, the Director must then allow the Trust to facilitate provision of the objectionable services for accommodated entities. The Bishop knows that his appointee will be forced to violate the Catholic faith.

29. While "all powers to manage the business and affairs of the Trust and each Series shall be exclusively vested in the Board and the Board may exercise all powers of the Trust[,]" "a majority of the Beneficial Owners may amend [the Trust] Agreement in writing at any time and thereby broaden or limit the Board's power and authority[.]" Accordingly, while the Board of Directors manages the daily affairs of the Trust, the Dioceses and their Bishops have ultimate decision-making authority and ultimately are forced to facilitate provision of the objectionable services to the employees of nonexempt entities within the Trust.

30. Additionally. it is the Diocese, as operator and sole Beneficial Owner of the Pittsburgh series of the Trust, which decides whether nonexempt entities

should be permitted to continue participating in the Trust. The Trust Agreement provides that: "Each Beneficial Owner may allow such Diocesan Entities to benefit in such Series in respect of which such Beneficial Owner is the holder of the sole Interest in accordance with the terms and conditions established by such Beneficial Owner in consultation with its advisors." Since nonexempt, non-grandfathered entities, like Plaintiff Catholic Charities, currently participate in the Trust, the Diocese will be facilitating coverage of the objectionable services for the employees of these nonexempt entities by permitting these entities to participate in the Trust. The Diocese is now faced with the decision of whether to expel these nonexempt entities from the Trust.

31. Moreover, the Bishop oversees the governance of Catholic Charities in his role as Chairman of its Membership Board, and is forced to facilitate coverage of the objectionable services when Catholic Charities, an organization which he oversees, provides the "self-certification" to Plaintiffs' TPA. That "certification" triggers an obligation on the part of the TPA to obtain the objectionable coverage for Catholic Charities' employees.

32. The Diocese is forced to further facilitate evil by providing Plaintiffs' TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiff Catholic Charities. By providing these names, the Diocese enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the

objectionable services. This is material cooperation in violation of Catholic beliefs.

33. Currently, "Catholic Benefits Trust" appears on the health insurance cards of Catholic Charities' employees and their dependents. Accordingly, should the Diocese continue to offer insurance to Catholic Charities, the Diocese will be implicated if an individual insured through Catholic Charities uses their health insurance card to obtain the objectionable services.

34. The Diocese's provision of health benefits to its employees and to the employees of affiliated entities, such as Plaintiff Catholic Charities, reflects the Catholic social teaching that healthcare is among those basic rights which flow from the sanctity and dignity of human life. For the Diocese to expel nonexempt entities from the Diocesan health plan or for nonexempt entities to have to drop healthcare benefits—in order to avoid the provision of the objectionable services—would inhibit Plaintiffs' ability to follow this teaching.

35. As Catholic entities, Plaintiffs believe that they must bear witness, including in their deeds, to the beliefs of the Catholic Church and that it would be scandal to act inconsistently with those beliefs. Plaintiffs bear witness to those teachings not only by word, but also by deed, including their actions regarding the provision of employee health insurance. Were Plaintiffs to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable services, Plaintiffs would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

Plaintiffs cannot bear witness to their teachings and at the same time act in a way that thwarts the transmission of life.

36. Moreover, Plaintiffs regularly speak out against abortions and the Mandate requires Plaintiffs to facilitate the provision of abortion-inducing drugs, sterilization services, contraceptives, and related counseling services in direct contradiction of Plaintiffs' speech.

IV. *The Religious Employer Exemption Does Not Work And Seeks To Divide The Church*

37. The Mandate artificially splits the Catholic Church in two, dividing the essential worship component from the equally essential charitable component, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an indispensable component of the Catholic faith, however, worship cannot be separated from providing good works, which are also indispensable and integral components of the Catholic faith and are at the heart of the mission of Catholic Church. Plaintiffs exercise the Catholic faith through worship and through good works. In sum, the mission of the Church, which is accomplished through good works, necessarily flows from the nature of the Catholic religion and cannot be separated from it.

38. By providing insurance to Catholic Charities, the Bishop and Diocese have been able to ensure that the health benefits provided by Catholic Charities were consistent with Catholic teachings. However,

now, the Diocese is forced to either refuse to continue offering coverage to Catholic Charities or facilitate coverage that does not comply with Catholic teaching.

39. The Diocese may well be forced to expel Catholic Charities from the Diocesan health plan to avoid facilitating coverage of the objectionable services, beginning January 1, 2014. If so, Catholic Charities would be forced to go out and obtain its own insurance so that its employees would still have access to healthcare benefits.

40. Even if Catholic Charities did obtain insurance separate from the Diocese, it would still need to provide the self-certification to its new TPA or insurer. Therefore, it still would be facilitating coverage of the objectionable services in violation of its religious beliefs, while at the same time being subject to higher costs for insurance. In his role on the Membership Board of Catholic Charities, Bishop Zubik could not approve any policies that would result in such facilitation.

41. If Plaintiff Catholic Charities failed to comply with the Mandate, it could be exposed to fines. Such fines would likely cripple Catholic Charities and its ability to provide social services to thousands in the local community.

42 Moreover, the Diocese, as sole Beneficial Owner of the Pittsburgh series of the Trust, is ultimately responsible for any fines incurred by nonexempt entities as a result of non-compliance with the Mandate. Under the Trust Agreement, "[a] particular Series shall be charged with the liabilities of that Series, and all expenses, costs, charges and

reserves attributable to any particular Series shall be borne by such Series."

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Ronald P. Lengwin
Father Ronald P Lengwin

Executed on: October 4, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, *et al.*,	:	Civil Action No. _____
Plaintiffs	:	ELECTRONICALLY FILED
v.	:	
KATHLEEN SEBELIUS, *et al.*,	:	
Defendants.	:	

DECLARATION OF FATHER SCOTT W. JABO FOR ERIE CATHOLIC PREPARATORY SCHOOL

I, Father Scott W. Jabo, pursuant to 28 U.S.C. § 1746, depose and state as follows.

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am the President of Erie Catholic Preparatory School ("Erie Catholic" or "the School") (doing business as Cathedral Preparatory School and

Villa Maria Academy) and have served in this role since 2010.

3. As a Roman Catholic priest in the Roman Catholic Diocese of Erie (the "Diocese") and President of Erie Catholic, I am very familiar with the School's Catholic mission, as well as its health insurance plan.

4. Erie Catholic's mission statement clearly states that "Cathedral Preparatory School and Villa Maria Academy form a Christ-centered, co-institutional, college preparatory Catholic school of the Diocese of Erie." As a college preparatory Catholic school of the Diocese and as part of the Roman Catholic Church, Erie Catholic is thus part of the Church's teaching mission. Erie Catholic, therefore, has the responsibility of teaching and upholding Catholic doctrine. Longstanding doctrines of the Catholic church include that life begins at the moment of conception, that sexual union should be reserved to a committed marital relationship in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral. All of these doctrines have been consistently taught by the School since its inception.

I. *Erie Catholic's Health Plan*

5. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services is inconsistent with the core moral and religious beliefs of the Roman Catholic Church and Erie Catholic.

6. Accordingly, Erie Catholic has historically excluded health insurance coverage for abortion,

abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

7. Erie Catholic offers health coverage to its approximately 90 employees through the Diocese's self-insured health plan ("Diocesan health plan").

II. *Injuries Related to the Final Rule*

8. The regulations at issue in this lawsuit (the "Mandate"), including the final rule issued by Defendants on June 28, 2013 (the "Final Rule"), injure Erie Catholic. Pursuant to the Final Rule, Erie Catholic is not exempt from compliance with the Mandate. As a result, Erie Catholic may be forced to restructure its health insurance plan or, on pain of substantial financial penalties, violate its sincerely-held religious beliefs by facilitating access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through its employee health plan.

9. The originally proposed regulations allowed a Catholic organization such as Erie Catholic, which provides health insurance to its employees through the health plan of an affiliated, exempt "religious employer" (here, the Diocesan health plan), to receive the benefit of that exemption regardless of whether it independently qualified as a "religious employer." However, the Final Rule eliminates that safeguard.

10. The so-called "accommodation" in the Final Rule for nonexempt religiously affiliated entities like Erie Catholic does not resolve the School's religious objection to compliance with the Mandate. The Mandate, even in its revised form, forces Erie

Catholic to facilitate access to products and services the use of which is antithetical to the Catholic faith. Its employees will only receive "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services by virtue of the employees' participation in an insurance plan offered by the School. In its final form, the Mandate requires Erie Catholic to authorize the third-party administrator of the Diocesan health plan to pay for the provision of the objectionable services for the School's employees, despite—and indeed as a consequence of—the School's religious objection to the Mandate. In other words, Erie Catholic's decision to provide a group health plan will trigger the provision of objectionable services to employees in a manner contrary to the School's religious beliefs.

11. Additionally, by signing the self-certification form, Erie Catholic is designating Plaintiffs' TPA as its plan administrator for the provision of the objectionable services.

12. If the Diocese is forced to expel Erie Catholic from its health plan to avoid sponsoring a health insurance plan that provides access to "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services, the School would have to obtain health insurance for its employees on its own, while still facilitating the provision of these objectionable services or facing punitive fines.

13. This injury strikes at the core of Erie Catholic's educational mission. As a Catholic high school, Erie Catholic's mission is to educate students in not only academic subjects, but also in the Catholic

faith. Erie Catholic has a responsibility to bear witness to the Church's teachings, particularly as they are defined by the Diocese, within which the School principally undertakes its ministry to educate young people. Erie Catholic and its employees, including its teachers, bear witness to those teachings not only by word, but also by deed. Those doctrines are upheld and integrated into every aspect of the school and in every subject area. If Erie Catholic were to provide a health insurance plan that triggers the provision of objectionable services to its employees in compliance with the Mandate, the School would be forced to act in a way inconsistent with the very teachings of the Roman Catholic Church that Erie Catholic undertakes to instill in its students. Erie Catholic cannot bear witness to its teachings and at the same time act in a way that thwarts the transmission of life. Erie Catholic will not, in short, be able to practice what it preaches.

14. Compliance with the Mandate—and, specifically, facilitating the provision of objectionable products and services—is also contrary to Erie Catholic's beliefs regardless of whether the School directly funds the provision of these objectionable services. Any use of the School's funds to comply with the Mandate, including through increased premiums or other costs associated with the provision of objectionable services, to provide the mandated products and services would only exacerbate the violation of its religious beliefs.

15. Further, as I understand it, the manner in which the Mandate achieves the cost-savings necessary for it to operate effectively is predicated on the Government's prediction of a decrease in the

number of births due to a predicted increase in the number of individuals utilizing the products and services that Erie Catholic finds objectionable. The Mandate thus forces Erie Catholic to not only directly facilitate access to objectionable products and services, but also to participate in a government scheme specifically designed to thwart the transmission of life contrary to the School's religious beliefs.

16. Additionally, Erie Catholic believes that contraception is immoral, and by expressing that conviction it routinely seeks to "influence" or persuade its fellow citizens of that view. It is violative of Erie Catholic's religious beliefs to force it to facilitate counseling seeking to influence or educate citizens regarding services which are contrary to Catholic doctrine, including abortion-inducing drugs, sterilization services, and contraceptives.

17. In sum, the Mandate violates Roman Catholic doctrine and Erie Catholic's sincerely-held religious beliefs and mission. It thus violates a core foundational principle of our country which protects the freedom of religion.

18. Finally, the Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable and educational components, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an essential component of the Catholic faith, however, worship

cannot be separated from providing good works and education, which are also essential and integral components of the Catholic faith and are at the heart of the mission of Catholic Church.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Scott W. Jabo
Father Scott W Jabo

Executed on: October 4, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, *et al.*,	Civil Action No..
Plaintiffs,	ELECTRONICALLY FILED
v.	
KATHLEEN SEBELIUS, *et al.*,	
Defendants.	

DECLARATION OF MARY MAXWELL FOR ST. MARTIN CENTER, INC. AND PRINCE OF PEACE CENTER, INC.

I, Mary Maxwell, pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am employed as the Executive Director of Catholic Charities of the Diocese of Erie ("Catholic Charities"). I have been so employed since 2004. I have been affiliated with the Roman Catholic Diocese

of Erie (the "Diocese") for 34 years. In 1979, I established the Diocesan Family Life Office, where I served as Director until 2004.

3. Plaintiffs St. Martin Center, Inc. ("St. Martin Center") and Prince of Peace Center, Inc. ("Prince of Peace Center") are both non-profit corporations run by a Membership Board, which oversees a Board of Directors to manage the daily affairs of the corporations. St. Martin Center and Prince of Peace Center are both integral entities within the Diocese. The Diocesan Bishop, Vicar General of the Diocese, Executive Director of Catholic Charities, and Chancellor of the Diocese all serve on the Membership Boards of St. Martin Center and Prince of Peace Center. The Bishop serves as Chairman of the Membership Boards. St. Martin Center and Prince of Peace Center are therefore required to adhere to Catholic doctrine at all times and in all manners.

4. In my role as Executive Director of Catholic Charities, I serve on the Membership Boards of St. Martin Center and Prince of Peace Center.

5. Based upon my job responsibilities and experience, I am personally familiar with the various social services which St. Martin Center and Prince of Peace Center provide throughout Northwestern Pennsylvania, including how these services are administered and funded.

I. *The Diocesan Health Plan*

6. The Diocese operates a self-insured health plan ("Diocesan health plan"). Highmark Inc. ("Highmark") is the current third-party administrator ("TPA") for the Diocesan health plan.

7 The employees of St. Martin Center and Prince of Peace Center are offered health insurance through the Diocesan health plan, which complies with Catholic teachings on abortion-inducing drugs, sterilization services, contraceptives, and related counseling services (the "objectionable services"). Specifically, abortion and sterilization are not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, the Diocesan health plan provides coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

8. The Diocesan health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan.

II. *Injuries Related To The Final Rule*

9. The regulations at issue in this lawsuit (the "Mandate"), including the final rule issued by Defendants on June 28, 2013 (the "Final Rule"), injure St. Martin Center and Prince of Peace Center. Pursuant to the Final Rule, St. Martin Center and Prince of Peace Center are not exempt from compliance with the Mandate. As a result, St. Martin Center and Prince of Peace Center may be forced to restructure their health insurance plan or, on pain of substantial financial penalties, violate their sincerely-held religious beliefs by facilitating access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans.

10. The originally proposed regulations allowed Catholic organizations such as St. Martin Center and Prince of Peace Center, which provide health insurance to their employees through the health plan of an affiliated, exempt "religious employer" (here, the Diocesan health plan), to receive the benefit of that exemption regardless of whether they independently qualified as a "religious employers." However, the Final Rule eliminates that safeguard.

11. The so-called "accommodation" in the Final Rule for nonexempt religiously affiliated entities like St. Martin Center and Prince of Peace Center does not resolve their religious objection to compliance with the Mandate. The Mandate, even in its revised form, forces St. Martin Center and Prince of Peace Center to facilitate access to products and services the use of which is antithetical to the Catholic faith. Their employees will only receive "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services by virtue of the employees' participation in an insurance plan offered by St. Martin Center or Prince of Peace Center. In its final form, the Mandate requires St. Martin Center and Prince of Peace Center to authorize the TPA of the Diocesan health plan to pay for the provision of the objectionable services for their employees, despite—and indeed as a consequence of—their religious objection to the Mandate. In other words, St. Martin Center's and Prince of Peace Center's decision to provide a group health plan will trigger the provision of objectionable services to their employees in a manner contrary to their religious beliefs.

12. Additionally, by signing the self-certification form, St. Martin Center and Prince of Peace Center are designating Plaintiffs' TPA as their plan administrator for the provision of the objectionable services.

13. If the Diocese is forced to expel St. Martin Center and Prince of Peace Center from its health plan to avoid sponsoring a health insurance plan that provides access to "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services, St. Martin Center and Prince of Peace Center would have to obtain health insurance for their employees on their own, while still facilitating the provision of these objectionable services or facing punitive fines.

14. This injury strikes at the core of St. Martin Center's and Prince of Peace Center's mission of providing good works to those in need. St. Martin Center and Prince of Peace Center have a responsibility to bear witness to the Church's teachings, particularly as they are defined by the Diocese. St. Martin Center, Prince of Peace Center, and their employees bear witness to those teachings not only by word, but also by deed. If St, Martin Center and Prince of Peace Center were to provide health insurance plans that trigger the provision of objectionable services to their employees in compliance with the Mandate, St. Martin Center and Prince of Peace Center would be forced to act in a way inconsistent with the very teachings of the Roman Catholic Church. St. Martin Center and Prince of Peace Center cannot bear witness to their teachings and at the same time act in a way that thwarts the transmission of life. St. Martin Center

and Prince of Peace Center will not, in short, be able to practice what they preach.

15. Compliance with the Mandate—and, specifically, facilitating the provision of objectionable services—is also contrary to St. Martin Center's and Prince of Peace Center's beliefs regardless of whether the entities directly funds the provision of these objectionable services. Any use of St. Martin Center's and Prince of Peace Center's funds to comply with the Mandate, including through increased premiums or other costs associated with the provision of objectionable services, to provide the mandated products and services would only exacerbate the violation of their religious beliefs.

16. Further, as I understand it, the manner in which the Mandate achieves the cost-savings necessary for it to operate effectively is predicated on the Government's prediction of a decrease in the number of births due to a predicted increase in the number of individuals utilizing the products and services that St. Martin Center and Prince of Peace Center find objectionable. The Mandate thus forces St. Martin Center and Prince of Peace Center to not only directly facilitate access to objectionable products and services, but also to participate in a government scheme specifically designed to thwart the transmission of life contrary to their religious beliefs.

17. Additionally, St. Martin Center and Prince of Peace Center believe that contraception is immoral, and by expressing that conviction they routinely seek to "influence" or persuade their fellow citizens of that view. It is violative of St. Martin Center's and Prince

of Peace Center's religious beliefs to force them to facilitate counseling seeking to influence or educate citizens regarding services which are contrary to Catholic doctrine, including abortion-inducing drugs, sterilization services, and contraceptives.

18. In sum, the Mandate violates Roman Catholic doctrine and St. Martin Center's and Prince of Peace Center's sincerely-held religious beliefs and mission. It thus violates a core foundational principle of our country which protects the freedom of religion.

19. Finally, the Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable and educational components, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an essential component of the Catholic faith, however, worship cannot be separated from providing good works and education, which are also essential and integral components of the Catholic faith and are at the heart of the mission of Catholic Church.

III. *Harm To The Ability Of St. Martin Center and Prince of Peace Center To Provide Social Services To Those in Need*

20. St. Martin Center and Prince of Peace Center provide significant public health services in their communities. Because of the stiff fines under the Mandate, St. Martin Center and Prince of Peace Center may be forced to limit services, or take more drastic action, thus denying the public critical health services in the local communities.

21. Several times every week, needy individuals, who have been referred by the Pennsylvania Department of Public Welfare, call Catholic Charities in Erie. If St. Martin Center and Prince of Peace Center are forced to limit services (or otherwise), they will no longer be able provide for these individuals who are not being served currently by the Government.

22. Without a workable alternative for religious objectors to the Mandate, many people in Northwestern Pennsylvania risk losing the social services that St. Martin Center and Prince of Peace Center currently provide.

23. Moreover, any fines incurred as a result of noncompliance with the Mandate are likely to affect employee retention in that fines are likely to require downsizing. Fines are also likely to result in a reduction of donations because donors will be concerned that their money will be used to pay fines as opposed to in support of charitable services. Ultimately, loss of employees and donations will hinder the ability of St. Martin Center and Prince of Peace Center to serve the community in their current capacity.

24. Because of rising poverty and unemployment in the thirteen-county region the Diocese serves, Catholic Charities is planning to expand the social services that it provides, such as the types of services provided by agencies St. Martin Center and Prince of Peace Center. While Catholic Charities can plan for this expansion, it cannot take any significant steps towards actually expanding because of impending fines due to the Mandate.

25. The leadership team and various boards within Catholic Charities are currently meeting to discuss a long-term project to expand the social services which Catholic Charities and its agencies currently provide. The leadership team and various boards are planning to add social service sites in counties which currently lack direct access to these social services.

26. The fact that enforcement of the Mandate is looming is a hazard for this long-term project. Catholic Charities, St. Martin Center, and Prince of Peace Center may not be able to continue in a manner consistent with their current mission and certainly will not be able to expand their charitable efforts if or when they face fines for non-compliance with the Mandate. Accordingly, the Mandate is impairing Catholic Charities and its agencies' efforts to expand their services.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Mary Maxwell
Mary Maxwell

Executed on: October 4, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, *et al.*,	:	Civil Action No.:
Plaintiffs,	:	ELECTRONICALLY FILED
v.	:	
KATHLEEN SEBELIUS, *et al.*,	:	
Defendants.	:	

DECLARATION OF DAVID J. MURPHY FOR THE ROMAN CATHOLIC DIOCESE OF ERIE, ST. MARTIN CENTER, INC., PRINCE OF PEACE CENTER, INC., AND ERIE CATHOLIC PREPARATORY SCHOOL

I, David J. Murphy, pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am employed as Chief Financial Officer of the Roman Catholic Diocese of Erie (the "Diocese"). I have been so employed since 1977

3. Based upon my job responsibilities and experience, I am personally familiar with health benefits for the Diocese, St. Martin Center, Inc. ("St. Martin Center"), Prince of Peace Center, Inc. ("Prince of Peace Center"), and Erie Catholic Preparatory School ("Erie Catholic") (hereinafter collectively, "Plaintiffs").

I. *The Diocesan Health Plan*

4. The Diocese operates a self-insured health plan ("Diocesan health plan"). St. Martin Center, Prince of Peace Center, and Erie Catholic are all insured through the Diocesan health plan. Highmark Inc. ("Highmark") is the current third-party administrator ("TPA") for the Diocesan health plan.

5. The Diocese currently has approximately 75 full-time equivalent employees.

6. There are currently approximately 774 employees and approximately 980 individuals insured through the Diocesan health plan, including those employed directly by the Diocese, as well as those employed by the parishes, schools (including Plaintiff Erie Catholic), and charitable agencies of the Diocese (including Plaintiffs St. Martin Center and Prince of Peace Center), and their dependants.

7 All of Plaintiffs' current employee health plan options comply with Catholic teachings on abortion-inducing drugs, sterilization services, contraceptives, and related counseling services (the "objectionable services"). Specifically, abortion and sterilization are

not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, all of the plans provide coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

8. The Diocesan health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The Diocese, and therefore all Plaintiffs that get insurance through the Diocesan health plan, changed its insurance carrier between March 23, 2010 and November 15, 2010. Specifically the Diocese changed its insurer on July 1, 2010 and became at that time a fully-insured health plan. As a result, Plaintiffs could not and did not include a statement describing their grandfathered status in their plan materials, as required by 26 C.F.R, § 54.9515-1251T(a)(2)(ii) for grandfathered plans. On July 1, 2011, the Diocese switched back to operating—as noted earlier in paragraph 4—a self-insured health plan. Accordingly, the Diocesan health plan is currently a self-insured health plan.

9, The next Diocesan plan year begins on July 1, 2014. However, the next *administrative* year for the Diocesan health plan—which is the date by which *all* benefits for the July 1, 2014 plan year must be implemented—begins on January 1, 2014. Accordingly, all Plaintiffs must be prepared to comply with the regulations at issue in this lawsuit (the "Mandate"), by January 1, 2014.

II. *The Religious Employer Exemption Does Not Work And Seeks To Divide The Church*

10. The Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable and educational components, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings.

11. Though the Diocese meets the Mandate's definition of a religious employer and is thus exempt from facilitating access to the objectionable services for its own employees, this exemption does not apply to the employees of nonexempt, affiliated entities such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, which participate in the Diocesan health plan.

12. This is true despite the fact that the Diocese, through Bishop Persico), directly oversees the management of Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, as integral components of the Diocese and Catholic Church.

13. Additionally, Erie Catholic does not qualify for the religious employer exemption, even though it is exempt from the tax-reporting obligations supposedly used as the basis for the exemption. Erie Catholic does not qualify merely because it is exempt under 26 C.F.R. § 1.6033-2(g)(1)(vii), as opposed to under Section 6033 of the Internal Revenue Code. The Government's religious employer exemption does not

work and rather divides the Catholic Church based on artificial distinctions.

III. *Plaintiffs Are Forced To Facilitate Coverage Of The Objectionable Services*

14. Consistent with Church teachings regarding the sanctity of life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

15. In the past, the Diocese has notified its TPA that it would not cover the objectionable services and it has never designated the TPA to provide those services for the Diocese or any of its affiliates. The Diocese's notification never before triggered the provision of the objectionable services.

16. The Mandate requires employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans, in violation of Catholic beliefs.

17. As a result, the Diocese, which provides coverage to employees of nonexempt, affiliated entities such as Plaintiffs St Martin Center, Prince of Peace Center, and Erie Catholic, is forced to either: (1) provide the employees of these entities with a separate insurance policy that triggers coverage of abortion-inducing drugs, contraception, sterilization, and related counseling, or (2) expel these entities from the Diocesan health plan and thereby force these entities to enter into an arrangement with another insurance provider that will, in turn, provide

the objectionable coverage. Either alternative violates the Diocese's sincerely-held religious beliefs, and will jeopardize the ability of the Diocese to continue to operate in its current fashion of providing affordable, quality health insurance. The first option forces the Diocese to act contrary to its sincerely-held religious beliefs. The second option not only makes the Diocese complicit in the provision of objectionable coverage, by forcing Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic out of its plan and to obtain the objectionable coverage through another insurance provider, but also compels the Diocese to submit to the Government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

18. If the Diocese takes the second option and expels Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic from the Diocesan health plan, and the expelled entities did not provide coverage for the objectionable services, they could be subject to fines which could reduce their ability to provide charitable services and to educate young men and women of the community.

19. Currently, all entities insured through the Diocesan health plan are provided three health plan options with three different levels of benefits. Thus, there are three different group health plan numbers which cover all individuals insured through the Diocesan health plan with no differentiation based on the employer of the insured individual. Now, Plaintiffs' TPA has requested that, on or about October 14, 2013, the Diocese supply information to enable the TPA to divide those entities within the

Diocese that fall within the Government's definition of what constitutes a "religious employer" from those entities which do not meet this definition.

20. Specifically, Plaintiffs' TPA has requested that, on or about October 14, 2013, Plaintiffs the Diocese, St. Martin Center, Prince of Peace Center, and Erie Catholic provide certifications as to whether they fall within the "religious employer exemption."

CERTIFICATION	
As the Authorized Representative for _____ (Print Name of Group) I, _____, certify that my (*Print Name of Employer's Authorized Representative*) response to the following question truthfully represents the above named group's characteristics that correspond to the definition of a religious employer.	
	CHECK ONE
The entity is a nonprofit organization as described in section 6033(a)(i) and section 6033(a)(3)(A)(l) or (iii) of the Internal Revenue Code.	☐ True ☐ False
Employer's Authorized Representative Signature: _____	
Date: _____	

21. Those Plaintiffs which do not fall within the exemption then will be forced to provide the self-certification to Plaintiffs' TPA. Accordingly, on or around October 14, 2013, Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic must decide whether they will sign the self-certification, thereby triggering the provision of the objectionable services to their employees as of the new administrative year starting on January 1, 2014.

22. The Diocese, in response to a request from Plaintiffs' TPA, then will have to create three new group health plan numbers, which will be reserved for employees of nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic. Employees of exempt entities, such as the Diocese, will retain their original group health plan numbers.

23. In addition to creating three new group health plan numbers in order to segregate the nonexempt entities, the Diocese also will have to provide Plaintiffs' TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic. Providing these names enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the objectionable services.

IV. *Injuries Relating To Past And Current Planning As Well As Time Needed For Future Planning And Budgeting*

24. The Diocese is currently being injured in being forced to alter its health plan to segregate exempt entities from nonexempt entities, as outlined above.

25. Other injuries relating to altering the Diocesan health plan are imminent and impending. Plaintiffs must have any benefit changes finalized by the next administrative year starting on January 1, 2014. Open enrollment for the January 1, 2014 administrative year will begin in November 2013. Accordingly, in the months leading up to November 2013, the Diocese will begin planning for open enrollment and will notify plan participants of benefit changes. The Diocese must know what benefits it will offer in order to plan for open enrollment.

26. Many analyses, negotiations, and decisions must occur before Plaintiffs can implement health plans for their employees. Plaintiffs have already expended and continue to expend significant personnel hours and costs attempting to discern the scope of the Mandate, the parameters of the religious employer exemption, the qualifications for the safe harbor, and how all of these impact Plaintiffs.

27. Expelling nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, from the Diocesan health plan may well result in increased costs for the Diocese and the expelled entities because each organization would be pooling financial resources in a smaller group. Currently, approximately 280 employees insured through the Diocesan health plan are employed by

nonexempt entities. This means that the Diocese could be forced to expel approximately one-third of its current plan participants. To the extent the Diocese and expelled entities are able to continue providing healthcare to their employees, the benefits would certainly not be as cost-efficient nor as comprehensive as what is currently provided.

28. The Diocese is currently discussing with its broker the cost projections associated with coming into compliance with the Mandate, despite the fact that Plaintiffs maintain that to do so would violate their core, sincerely-held religious beliefs. The Diocese also is currently discussing with its broker what the potential ramifications of non-compliance would be. Any plan changes must be discussed first with the broker, and then, they must be communicated and discussed with Highmark.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ David J. Murphy
David J. Murphy

Executed on: October 4, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, *et al.*,	Civil Action No.:
Plaintiffs,	ELECTRONICALLY FILED
v.	
KATHLEEN SEBELIUS, *et al.*,	
Defendants.	

DECLARATION OF FATHER SCOTT DETISCH, PH.D.

I, Father Scott Detisch, Ph.D., pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I have a doctorate degree in Systematic Theology. I am serving as a theological advisor to Most Reverend Lawrence T. Persico, Bishop of the Roman Catholic Diocese of Erie on matters of Catholic doctrine, including moral theology. I am

advising the Bishop on ecclesiastic and theological matters affecting the Diocese and entities and individuals within the Diocese.

3. I currently serve as an Adjunct Faculty Member at Saint Mary Seminary & Graduate School of Theology, where I teach Systematic Theology. I have served as the Director of the Center for Pastoral Studies at Gannon University in Erie, Pennsylvania. Additionally, I am currently the pastor of Holy Cross Roman Catholic Church in Fairview, Pennsylvania.

4. The Magisterium, which consists of the Pope and the College of Bishops in union with the Pope, decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church's mission in the world, including how that mission occurs within the settings of Catholic schools, agencies, and other institutions. Bishop Persico is responsible for carrying out that mission in the Diocese and is final arbiter of ecclesiastic matters in the Diocese.

5. The Bishop directly oversees the administration of Plaintiffs St. Martin Center, Inc. ("St. Martin Center"), Prince of Peace Center, Inc. ("Prince of Peace Center"), and Erie Catholic Preparatory School ("Erie Catholic") through representation on the Membership Boards of these entities. The Bishop serves as Chairman of the Membership Boards of St. Martin Center and Prince of Peace Center, and has certain reserved powers in his role on the Membership Board of Erie Catholic. The Bishop oversees the management of St. Martin Center, Prince of Peace Center, and Erie Catholic,

and ensures that they adhere to Catholic doctrine at all times and in all manners.

6. In the Bishop's role on the Membership Boards, he is ultimately responsible for approving policies of the Board of Directors, including ensuring that all policies comply with Catholic doctrine.

I. *Plaintiffs' Religious Objections To The Mandate*

7. Catholic religious teaching prohibits subsidizing, providing, and/or facilitating coverage for abortion-inducing drugs, sterilization services, contraceptives, and related counseling services. The term contraceptives refers to artificial contraceptives, as opposed to Natural Family Planning, which is consistent with Catholic teachings. These well-established religious beliefs flow from a unified system of beliefs articulated in the Catechism of the Catholic Church. One of the central tenets of this system is belief in the sanctity of human life and the dignity of all persons.

8. Thus, Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the "dignity of the human person is rooted in his creation in the image and likeness of God." Catechism of the Catholic Church ¶ 1700.

9. One outgrowth of belief in human life and dignity is Plaintiffs' well-established belief that "[h]uman life must be respected and protected absolutely from the moment of conception." *Id.* ¶¶ 2270. As a result, Plaintiffs believe that abortion is prohibited and that they cannot facilitate the provision of abortions. *Id.* ¶¶ 2271-72.

10. Furthermore, Plaintiffs adhere to Catholic teachings that prohibit any action which "render[s] procreation impossible," and which, more specifically, regard direct sterilization as "unacceptable." *Id.* ¶¶ 2370, 2399. Plaintiffs also believe that contraception is immoral, and by expressing that conviction they routinely seek to "influence" or persuade their fellow citizens of that view.

11. Consistent with Church teachings regarding the sanctity of human life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

12. The regulations at issue in this lawsuit (the "Mandate"), require employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans. Freedom of religion includes not just freedom to practice religion, but also freedom from coercion by civil authorities that would violate the principles adhered to by a religion.

13. Plaintiffs have determined that the Mandate violates Catholic doctrine and that complying with the Mandate would result in Plaintiffs facilitating the provision of the objectionable services.

14. It violates Plaintiffs' religious beliefs to facilitate the objectionable coverage and services, even if Plaintiffs do not have to contract, arrange, pay, or refer for the objectionable coverage and services.

15. When Plaintiffs are prohibited from engaging in certain conduct, they are equally prohibited from designating or assisting someone else to do it for them. Here, Plaintiffs are themselves prohibited from providing this coverage, including for abortion-inducing drugs which Plaintiffs believe to be a grave moral evil, and are equally prohibited from designating or assisting their third-party administrator ("TPA") in providing the coverage. This constitutes immoral material cooperation in the grave moral evil. This is true even though Plaintiffs do not intend the immoral act, since Plaintiffs are being forced to act with knowledge that a grave moral evil will result from their conduct. In past years, however, there have been no religious violations in informing their TPA of Plaintiffs' religious beliefs because it did not trigger the violation of those beliefs.

16. There is no prohibition in paying a salary to Plaintiffs' employees, even if those employees may use the money to act contrary to Catholic doctrine. But that is completely different from the situation here since it does not constitute material cooperation with a grave immoral act. For example, when the Diocese pays an employee's salary, it does not designate the employee to purchase pornography, does not designate the employee to administer a program that supplies pornography, and does not trigger the provision of pornography.

17 Accordingly, Plaintiffs cannot facilitate coverage for the objectionable services through their TPA nor can the Membership Boards of the entities approve any policies that would result in such facilitation.

18. Moreover, as final arbiter of ecclesiastic matters in the Diocese, the Bishop cannot facilitate coverage of the objectionable services for nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic.

II. *Plaintiffs Are Forced To Facilitate Coverage Of The Objectionable Services*

19. The so-called "accommodation" does not resolve Plaintiffs' religious objection. The Mandate forces St. Martin Center, Prince of Peace Center, and Erie Catholic to facilitate access to products and services antithetical to the Catholic faith.

20. Indeed, it is St. Martin Center's, Prince of Peace Center's, and Erie Catholic's decision to provide group health plans to their employees which results in facilitation of the objectionable services in violation of Plaintiffs' religious beliefs.

21. In order to be eligible for the so-called "accommodation," Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic must provide a "certification" to Plaintiffs' third-party administrator ("TPA") setting forth their religious objections to the Mandate. The provision of this "certification," in turn, automatically triggers an obligation on the part of the TPA to provide or obtain the objectionable coverage for the employees of St. Martin Center, Prince of Peace Center, and Erie Catholic.

22. The self-certification form also designates the TPA as Plaintiffs' plan administrator for the provision of the objectionable services. Without the self-certification form, the TPA is prohibited from providing coverage for the objectionable services to Plaintiffs' employees.

23. A religious organization's self-certification, therefore, is a trigger and but-for cause of the objectionable coverage. In other words, under the final version of the Mandate, St Martin Center's, Prince of Peace Center's, and Erie Catholic's decision to participate in the Diocesan health plan triggers the provision of contraceptive benefits to their employees in a manner contrary to their beliefs. This direct causal connection to immoral activity is material cooperation in contravention of Plaintiffs' religious beliefs. Therefore, it is morally improper for St. Martin Center, Prince of Peace Center, and Erie Catholic to execute the self-certification, which will result in facilitating the provision of the objectionable services to their employees.

24. The Diocese is forced to further facilitate evil by providing Plaintiffs' TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic. By providing these names, the Diocese enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the objectionable services. This is material cooperation in violation of Catholic beliefs.

25. The Diocese's provision of health benefits to its employees and to the employees of affiliated entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, reflects the Catholic social teaching that healthcare is among those basic rights which flow from the sanctity and dignity of human life. For the Diocese to expel nonexempt entities

from the Diocesan health plan or for nonexempt entities to have to drop healthcare benefits—in order to avoid the provision of the objectionable services—would inhibit Plaintiffs' ability to follow this teaching.

26. As Catholic entities, Plaintiffs believe that they must bear witness, including in their deeds, to the beliefs of the Catholic Church and that it would be scandal to act inconsistently with those beliefs. Plaintiffs bear witness to those teachings not only by word, but also by deed, including their actions regarding the provision of employee health insurance. Were Plaintiffs to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable services, Plaintiffs would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings. Plaintiffs cannot bear witness to their teachings and at the same time act in a way that thwarts the transmission of life.

27. Moreover, Plaintiffs regularly speak out against abortions and the Mandate requires Plaintiffs to facilitate the provision of abortion-inducing drugs, sterilization services, contraceptives, and related counseling services in direct contradiction of Plaintiffs' speech.

III. *The Religious Employer Exemption Does Not Work And Seeks To Divide The Church*

28. The Mandate artificially splits the Catholic Church in two, dividing the essential worship component from the equally essential charitable and educational components, the former which receives

the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an indispensable component of the Catholic faith, however, worship cannot be separated from providing good works and education, which are also indispensable and integral components of the Catholic faith and are at the heart of the mission of Catholic Church. Plaintiffs exercise the Catholic faith through worship, good works, and by providing education. In sum, the mission of the Church, which is accomplished through good works and education, necessarily flows from the nature of the Catholic religion and cannot be separated from it.

29. By providing insurance to St. Martin Center, Prince of Peace Center, and Erie Catholic through the Diocesan health plan, the Diocese has been able to ensure that the health benefits provided by these entities were consistent with Catholic teachings. However, now, the Diocese is forced to either expel these entities from its health plan or facilitate coverage that does not comply with Catholic teaching.

30. The Diocese may well be forced to expel Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic from the Diocesan health plan to avoid facilitating coverage of the objectionable services, beginning January 1, 2014. If so, these Plaintiffs would be forced to go out and obtain their own insurance so that their employees would still have access to healthcare benefits.

31. Even if St. Martin Center, Prince of Peace Center, and Erie Catholic did obtain insurance

separate from the Diocese, they would still need to provide the self-certification to their new TPA or insurer. Therefore, they still would be facilitating coverage of the objectionable services in violation of their religious beliefs, while at the same time being subject to higher costs for insurance. In his role on the Membership Boards of St. Martin Center, Prince of Peace Center, and Erie Catholic, Bishop Persico could not approve any policies that would result in such facilitation.

32. If Plaintiffs St Martin Center, Prince of Peace Center, and Erie Catholic failed to comply with the Mandate, they could be exposed to fines. Such fines would likely cripple Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic and their ability to provide social and educational services to thousands in the local community.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Scott Detisch

Father Scott Detisch, Ph.D.

Executed on: October 4, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, *et al.*, PLAINTIFFS, v. KATHLEEN SEBELIUS, *et al.*, DEFENDANTS.	CIVIL ACTION NO.: 1:13-cv-00303 JUDGE ARTHUR J. SCHWAB
MOST REVEREND DAVID A. ZUBIK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, *et al.*, PLAINTIFFS, v. KATHLEEN SEBELIUS, *et al.*, DEFENDANTS.	CIVIL ACTION NO.: 2:13-cv-01459 JUDGE ARTHUR J. SCHWAB

ADDITIONAL STIPULATED FACTS

I. STIPULATIONS REGARDING SCOPE OF EXEMPTIONS

1. The challenged regulations—or, collectively, "the Mandate"—do not apply to qualifying

"grandfathered" healthcare plans already existing as of March 23, 2010—the date the Affordable Care Act was enacted. *See* 75 Fed. Reg. 34,538, 34,540 (June 17, 2010).

2. A grandfathered health plan is not required to comply with the preventive services coverage requirement at 42 U.S.C. § 300gg-13.

3. A grandfathered health plan may maintain its grandfathered status so long as, if, compared to its existence on March 23, 2010, it does not eliminate all or substantially all benefits to diagnose or treat a particular condition, does not increase a percentage cost-sharing requirement, does not significantly increase a fixed-amount cost-sharing requirement, does not significantly reduce the employer's contribution, or does not impose or tighten an annual limit on the dollar value of any benefits. 26 C.F.R. § 54.9815-1251T(a), (g)(1); 29 C.F.R. § 2590.715-1251(a), (g)(1); 45 C.F.R. § 147.140(a), (g)(1).

4. Based on the Government's estimates in 2010, their mid-range estimate was that, by the end of 2013, 49% of all employer plans will still retain their grandfathered status. 75 Fed. Reg. 34,538, 34,550-53 (June 17, 2010).

5. According to survey data from the Kaiser Family Foundation and Health Research & Educational Trust, 58 percent of firms had at least one grandfathered health plan in 2012, down from 72 percent in 2011, and 48 percent of covered workers were in grandfathered health plans in 2012, down from 56 percent in 2011. Employer Health Benefits 2012 Annual Survey at 7-8, 190, *available at* http://ehbs.kff.org/pdf/2012/8345.pdf.

6. Defendants' mid-range estimate has been that approximately 98 million individuals will be enrolled in grandfathered group health plans in 2013. 75 Fed. Reg. 41,726, 41,732 (July 19, 2010).

7. On February 15, 2012, defendants created a temporary enforcement safe harbor for non-grandfathered plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage that did not qualify for the religious employer exemption (and any associated group health insurance coverage). 77 Fed. Reg. 8725, 8727 (Feb. 15, 2012).

8. Small employers are exempt from the employer responsibility provision, which means that, starting in 2015, such employers are not subject to the possibility of assessable payments if they do not provide health coverage to their full-time employees and their dependents. 26 U.S.C. § 4980H(c)(2).

9. Small businesses that do offer non-grandfathered health coverage to their employees are required to provide coverage for recommended preventive services, including contraceptive services, without cost-sharing. 78 Fed. Reg. at 39,870, 39,887 n.49 (July 2, 2013).

10. On July 2, 2013, the Government announced that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin. Mark J. Mazur, *Continuing to Implement the ACA in a Careful, Thoughtful Manner*, Treasury Notes (July 2, 2013) (Plaintiffs' Exhibit P40).

11. The Congressional Budget Office (CBO) estimates that roughly 1 million fewer people are

expected to be enrolled in employment-based coverage in 2014 than the number that had been projected in CBO's May 2013 baseline, primarily because of the one-year delay in penalties on employers. Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Representative Paul Ryan, Chairman, Committee on the Budget at 4 (July 30, 2013) (Plaintiffs' Exhibit P41).

12. CBO estimates that of those who would otherwise have obtained employment-based coverage, roughly half will be uninsured and the others will obtain coverage through the exchanges or will enroll in Medicaid or the Children's Health Insurance Program (CHIP). *Id.*

II. STIPULATIONS REGARDING PENALTIES

13. Regarding the fine for providing coverage without the objectionable preventive services, the parties have already stipulated that one of the "mechanisms to enforce the challenged regulations" is that "[c]ertain employers whose group health plans fail to provide certain required coverage may be subject to a penalty of $100 a day per affected beneficiary. *See* 26 U.S.C. § 4980D(b)." *Zubik*, Doc. No. 39 at ¶ 50(a).

14. It is not possible to determine the exact amount of tax Plaintiffs could be assessed under this penalty.

III. STIPULATIONS REGARDING PREVENTIVE SERVICES TO WHICH PLAINTIFFS OBJECT

15. The Health Resources and Services Administration's Women's Preventive Services Guidelines specifies eight categories of preventive services which must generally be covered by group health plans with no cost sharing. HRSA, *Women's Preventive Service Guidelines* (Aug. 1, 2011), *available at* http://www.hrsa.gov/womensguidelines/ (Plaintiffs' Exhibit P85).

16. Plaintiffs object to only one of these eight categories as a result of their sincerely held religious beliefs. *Id.*

17. The category of preventive services to which Plaintiffs object, titled "contraceptive methods and counseling," covers "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *Id.*

18. Plaintiffs do not object to the other seven categories of preventive services. *Id.*

Dated: November 13, 2013

Respectfully submitted,

/s/ Paul M. Pohl

Paul M. Pohl (PA ID No. 21625)
John D. Goetz (PA ID No. 47759)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND DAVID A. ZUBIK, et al.,	Civil Action
Plaintiffs,	No. 13-1459 (Zubik)
vs.	
KATHLEEN SEBELIUS, et al.,	No. 13-303E
Defendants.	(Persico)
MOST REVEREND LAWRENCE T. PERSICO, et al.,	
Plaintiffs,	
vs.	
KATHLEEN SEBELIUS, et al.,	
Defendants.	

Transcript of proceedings on November 12, 2013, United States District Court, Pittsburgh, Pennsylvania, before Arthur J. Schwab, District Judge

APPEARANCES:

For the Plaintiffs:	Paul M. Pohl, Esq. John D. Goetz, Esq. Leon F. DeJulius, Esq. Ira M. Karoll, Esq. Mary Pat Stahler, Esq.
For the Defendants:	Brad P. Humphreys, Esq.
Court Reporter:	Richard T. Ford, RMR, CRR 6260 U.S. Courthouse Pittsburgh, PA 15219

(412) 261-0802

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription

* * *

[Page 16]

[Testimony of Bishop David A. Zubik]

Q. Please describe exactly what the role and responsibilities of a diocesan bishop are under the laws and precepts of the Catholic Church?

A. First and foremost—it is important to note that a person becomes the bishop of a diocese by decision of the pope. So when one is appointed as a shepherd of the diocese, one is responsible for everything that's Catholic within that diocese. So that means for everything that comprises the six counties of southwestern Pennsylvania and the Diocese of Pittsburgh I'm responsible.

I think, technically speaking, bishop is responsible to teach, to govern, and to sanctify to make sure you can get as many people into heaven as possible.

Governing means to lead people in a way that will reflect the integrity of the church.

And teaching, clearly, means reflecting what are the effects of the universal traditions of the church. That is kind of technical.

But probably the best way and the way most people in the Court would say, most people would say the spiritual father of the people in southwestern

Pennsylvania and to help them understand their faith and to help them to grow in holiness.

THE COURT: We are going to have to slow the witness down. You have to slow down because he has to take down everything you say and we want that to be accurate, and if you speed up, then it makes it more difficult.

THE WITNESS: Your Honor, I will try my best.

THE COURT: Thank you.

THE WITNESS: You're welcome.

BY MR. POHL:

Q. Bishop, approximately how many Catholics are there in your diocese?

A. Nearly 700,000.

Q. Now, you have talked about what the role and responsibilities are of a bishop. I want to focus on one of those three points. What specifically is your responsibility with regard to the teachings, as the teacher authority in the diocese?

A. Well, not only that in my own teaching and preaching that I reflect what in fact are the tenets of the Catholic Church, but to provide for many avenues in our schools, in our parish, adult formation programs, in any of the documents that I may write that they would be reflective of what the Catholic Church believes.

Q. As a Plaintiff in this case, am I correct that you are seeking at this point a preliminary injunction to block the effectiveness of what has been called the preventive services mandate, a series of regulations promulgated pursuant to the Affordable Care Act, is that right?

A. That is correct.

Q. Now, let's talk for a few moments about Catholic Charities of the Diocese of Pittsburgh. What is your role in relation to the co-Plaintiff Catholic Charities of the Diocese of Pittsburgh?

A. I am not only one of the members, but I am the chair of the membership.

Q. Do you have additional responsibilities as bishop and in that role on the membership board to be sure that what Catholic Charities does in every respect is consistent with the teachings of the church?

A. Absolutely. And I refer back to my original answer of what the pope expects when he appoints a person who is a bishop of a diocese.

MR. POHL: I would note for the record, Your Honor, that the bylaws of Catholic Charities are an exhibit in evidence now by agreement, noted at the beginning of the proceeding.

THE COURT: Give us an exhibit number, please, since that seems to be your delegated task.

MR. GOETZ: I will get it in a second for you, Your Honor. 12, Your Honor, P12.

THE COURT: Thank you.

BY MR. POHL:

Q. You talked about your responsibilities as chair of the membership board and you talked about insuring that Catholic Charities does its work consistent with the teaching of the church. Do you also watch and monitor and govern in your role as bishop and chair of the board what Catholic Charities

can or cannot do with regard to subjects such as abortion, sterilization, and contraception?

A. Absolutely.

Q. Do you have frequent communication with Catholic Charities and its executive director?

A. I do.

Q. Is the role which you have described one which is set forth in one or more governance documents of the Catholic Church?

A. It is.

MR. POHL: I would like now, Your Honor, to direct the witness' attention to, and the Court's attention, to Exhibit 3, which we can call up on the screen.

BY MR. POHL:

Q. You should have it, Bishop, in the book in front of you. Do you have the hard copy there?

A. I do not.

MR. DEJULIUS: I have it, Your Honor. May I approach?

THE COURT: Sure. You don't need to ask.

BY MR. POHL:

Q. It should be in the Plaintiffs' exhibit book 3. No. 3.

A. Okay, thank you.

Q. On the screen, just it should say. Apostolic letter issued *motu proprio* of the Supreme Pontiff Benedict XVI on the service of charity.

A. I have it in front of me.

Q. What is an apostolic letter issued *motu proprio*?

A. *Motu proprio* means it is a directive. It is an expectation, it's a requirement. It's not in contradistinction to, it's not a response to a question that's asked, but a directive that the pope would in fact give to bishops throughout the world.

Q. All right. Would this be something that you received from the pope that directs you as the bishop of what your obligations are in respect to a charitable organization like Catholic Charities?

A. Yes.

Q. I just want to call your attention to a couple specific provisions and ask you to explain a bit how you understand them and implement them.

If you look at the second paragraph on the first page, in the introduction, can you read the first two lines down to the semicolon in the middle of the second line. That's where I want to start.

A. The service of charity is also a constitutive element of the church's mission and an indispensable expression of her very being.

Q. All right. Can you explain how you understand and apply that in your dealing as the bishop and chair of the board in dealing with Catholic Charities?

A. It means living one's faith. It follows directly on the gospel expectation from Jesus that we are not only going to worship God, but we live the faith that is ours.

Q. That goes beyond—does it go beyond just prayer and worship in a house of worship?

A. It does, to use Cardinal Dolan's expression, it is what we do between Sunday and the next Sunday

Q. If you look, please, at Page 2 of Plaintiffs' hearing Exhibit 3, and if you can, please read the first four lines down to the phrase, "intentions of the faithful." A. Is this on the first paragraph on Page 2?

Q. The bottom paragraph on Page 2.

A. Nevertheless, to the extent that such activities are promoted by the hierarchy itself or are explicitly supported by the authority of the church's pastors, there is a need to ensure that they are managed in conformity with the demands of the church's teaching and the intentions of the faithful, and that they likewise respect the legitimate norms laid down by civil authorities.

Q. All right. Now, how do you understand an attempt to implement that directive to you as the bishop and the chairman of the board at Catholic Charities?

A. It coincides with my responsibilities as a teacher of the faith, which means that the practice of charity has to reflect the teachings of the church.

Q. All right. Now, if you will, please, look at Page 3, Article 1, Section 3. If you can please read Section 3, I am going to ask you a question or two about it.

A. In addition to observing the canonical legislation, the collective charitable initiatives to which this *motu proprio* refers are required to follow Catholic principles in their activity and they may not accept commitments which could in any way affect the observance of those principles.

Q. How do you understand and apply that to Catholic Charities?

A. The Catholic teaching and tradition and its teachings has to be observed in all instances.

Q. And it's your responsibility to be sure that happens?

A. Correct.

Q. All right. Now, if we go down to the bottom of that page. Would you read the first three lines of Section 2, please.

A. Of Article 3?

Q. Yes. No—Article 3, Section 2, yes.

A. For agencies not approved at the national level, even though they operate in different dioceses, the competent authority is understood to be the diocesan bishop of the place where the agency has its principal office. In any event, the agency has the duty to inform the bishops of other dioceses where it operates and to respect the guidelines for the activities of the various charitable agencies present in those dioceses.

Q. As you understand and apply that, what are your responsibilities under that section?

A. Clearly means that I have an obligation to make sure that Catholic Charities and the Diocese of Pittsburgh follows the teachings of the church.

Q. If you will—I just have two more here. If you will read, please, Article 4, Section 3, of Exhibit 3.

A. It is the responsibility of the diocesan bishop to ensure that in the activities and management of these agencies the norms of the church's universal and particular law are respected, as well as the intentions of the faithful who made donations or bequests for these specific purposes.

Q. And how do you understand and apply that responsibility?

A. It means that the Catholic Charities has to be integral with the teachings of the church and that we cannot be in a position where we provide scandal.

Q. Finally, if you will look at Article 9, Section 3, which is at the top of the next page. If you can read that, please, and I am going to ask you a question about it.

A. It is the duty of the diocesan bishop and respective parish priests to see that in this area the faithful are not led into error or misunderstanding. Hence, they are to prevent publicity being given through parish or diocesan structures to initiatives which, while presenting themselves as charitable, propose choices or methods at odds with the church's teaching.

Q. All right. Please explain what you understand your responsibilities to be under that section of the directive.

A. Once again, it is my responsibilities as bishop to maintain the integrity of the church's teachings in all matters, especially when it comes to charitable acts.

Q. Do you conscientiously try to follow those directives in your dealings with Catholic Charities?

A. I do.

Q. All right. Do you also, in addition to the role you serve with respect to co-Plaintiff Catholic Charities and the Diocese of Pittsburgh, as the bishop and chair of the membership board and the leading teaching authority, do you have any

responsibilities relating to Catholic Charities organizations through the US Conference of Catholic Bishops?

A. I do.

Q. Can you explain for the Court what that is?

A. It's just within the last several weeks I have been appointed as the liaison between the US Conference of Catholic Bishops and Catholic Charities USA. As a matter of fact, I am going to begin to work on those responsibilities tomorrow.

Q. I will ask a very basic question, Bishop. Why does the diocese operate Catholic Charities?

A. It's an absolute essential of living out the gospel. As we so often publicly will make reference, Catholic Charities is the charitable arm of the church. It's not an option. It's an absolute necessity for us to be church and to be true to the teachings of Jesus.

Q. Is Catholic Charities of the Diocese of Pittsburgh the only separately incorporated affiliate you oversee as the head of the diocese?

A. It is not.

Q. Give me an example of other incorporated entities—

A. Saint Anthony's School programs that work with children who have some disabilities. Some of the Catholic high schools, for example, would be an example of that as well too.

* * *

[Page 39]

CROSS-EXAMINATION

BY MR. HUMPHREYS:

* * *

[Page 40]

* * *

Q. You testified that the diocese provides health insurance to its employees. In the past has the diocese ever informed its third party administrator, Highmark or UPMC, that it does not want to include coverage for contraceptive services?

A. Absolutely. That's the arrangement since we have the two third party administrators and we are self-insured, and the self-insured plans have reflected Catholic belief.

Q. Did informing Highmark or UPMC of that belief and that desire, did that violate your religious beliefs in informing them of that?

A. It was an obligation that we had to inform them.

Q. So it did not violate your religious beliefs?

A. No.

Q. Also, in the past in order to insure that the diocese's health plan is extended to its various employees and to the employees of Catholic Charities, it is true, is it not, that the diocese informed Highmark or UPMC of who the diocese or Catholic Charities employees are?

A. Correct.

Q. Did doing that violate your religious beliefs?

A. No.

Q. It is also true, isn't it, that the diocese would have to inform Highmark or UPMC when an employee is no longer employed by the diocese?

A. That's correct.

Q. In your role as chair of the membership of Catholic Charities—membership board, excuse me, and your oversight of that organization, do you know what percentage of Catholic Charities employees share the religious beliefs of their employer?

A. I do not.

Q. Do you know what percentage of those employees use contraception in their personal life?

A. I do not.

* * *

[Page 42]

THE COURT: Any objection to my asking a couple questions?

MR. POHL: None at all, Your Honor.

MR. HUMPHREYS: Not at all, Your Honor.

THE COURT: I am not Roman Catholic, so I am not used to some of your terminology. Can you help me understand the relationship between faith and works in the Roman Catholic tenets and documents.

THE WITNESS: Your Honor, they are integral. I think to use the analogy of Cardinal Dolan's testimony here this morning, it is a matter of when we leave mass on Sundays we're called forth to go forth and live our faith. That's absolutely critically important. We argue that the purpose of faith is not simply what we do in our churches on the weekend, but what we do at our work places and especially how

we have the obligation to be reaching out to people who are in need. So that's an absolute essential to our faith and there is no split between the two.

THE COURT: Okay. Is it your intent to instruct the head of Catholic Charities not to sign the self-certification form?

THE WITNESS: I would, Your Honor, although my understanding is that I would have to sign that I think as the chairman of the board.

THE COURT: Is it your intent that you will not sign the self-certification form?

THE WITNESS: That's my—that would be my intent.

THE COURT: You are willing to suffer the consequences that could flow from there?

THE WITNESS: Well, I think the—I wouldn't be able to live with myself to know that we would be contradicting what our beliefs are.

* * *

[Page 45]

[Testimony of Susan Rauscher]

THE COURT: You may call your next witness, please.

MR. GOETZ: Yes, Your Honor. Plaintiffs call Susan Rauscher.

SUSAN RAUSCHER, a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOETZ:

Q Good morning, Mrs. Rauscher.

A Good morning.

Q Where are you currently employed?

A Catholic Charities of the Diocese of Pittsburgh.

Q And what is your title?

A I'm the executive director.

* * *

[Page 55]

Q Has Catholic Charities' health care plan ever covered the preventive services addressed in the final rule of the mandate?

A No.

Q Has any employee of Catholic Charities, Miss Rauscher, ever asked you for or complained about not having these preventive services in Catholic Charities' health care plan?

A No.

Q Are you familiar with any Catholic Charities employees who have suffered negative health consequences as a result of the health care plan's exclusion of the objectionable preventive services?

A No.

* * *

[Page 60]

Q Miss Rauscher, would it constitute a burden to you as executive director of Catholic Charities in the exercise of Catholic life to sign a self-certification form?

A It would.

Q In your view would the burden of signing the form be a substantial one?

A It would.

Q Do you hold these views sincerely as the executive director of Catholic Charities?

A I do.

Q Does Catholic Charities need approval to sign this self-certification form from Bishop—Bishop Zubik?

A It does.

Q Have you spoken with the Bishop about whether or not he will allow the signature?

A We have not talked particularly about actually allowing the signature. We've talked about the implication of the signature and all of the various options that are before us.

Q What will happen in your understanding, Miss Rauscher, to Catholic Charities if it does not sign the self-certification form?

A Um, my sense would be that we would continue to provide health care services to our employees and begin to incur the fines.

Q Do you know how much the fines will be?

A They are $100 per day per eligible employee.

Q Do you have an estimate, Miss Rauscher, about what the total fines would be for Catholic Charities in a year for failing to sign the self-certification form?

A Um, without specifics we could be anywhere between $2 and $4 million a year.

Q And what is the operating budget in total for Catholic Charities?

A Ten million dollars.

Q So is it true that a significant portion of your funds would have to be spent on these fines?

A Absolutely.

Q Is there any way in your view as executive director that Catholic Charities could absorb and pay these fines?

A Not without significant changes to the organization. We take very seriously the money that's entrusted to us. We consider ourselves good stewards of those resources; and to have to use those resources to pay Government fines as opposed to providing health and human services would be very problematic.

Q Could you give us some specific examples of what would happen to Catholic Charities if it were subject to paying these fines?

A If we would no longer be able to have enough resources to cover our expenses, it would mean, quite simply, laying off staff and closing programs.

Q What are some of the programs that have budgets in the neighborhood of the estimate of fines that you provided to the Court?

A Our Free Health Care Center for the Uninsured, which sees about—they provide about 800 dental and medical appointments each month. Our St. Joe's House of Hospitality, which is a residence for homeless older men and has 60 residents at all times and a waiting list. Absolutely our safety net and stability service where we provide

resources to individuals to keep the heat on, provide food, clothing, those kind of things. Those would be our bigger programs that would have budgets near those numbers.

Q And what would the consequences be to the community, Miss Rauscher, of curtailing or shutting down the programs you just testified to?

A For us it's really tangible. It would be fewer people would be sheltered, fewer meals would be served, health care wouldn't be available to people who were uninsured, families would be in homes that were not heated, no electricity, no lights, emergency food assistance wouldn't be available.

Q Would there be any consequences to the employees to Catholic Charities of the failure to sign a self-certification form?

A Well, we wouldn't be able to maintain the same number of employees that we currently have, so we would be laying off staff.

Q The pressure that you testified to earlier between signing the form and violating your faith and payment of fines, do you know how you will reconcile that conflict?

A I can't say that I can—I can tell you one way or the other up here. I think we'd have to look at absolutely every possibility, and we are sitting here before this Court looking for the protection that we believe we deserve.

Q Now, earlier today, while you were sitting in the gallery as a—as executive director of Catholic Charities, Cardinal Dolan spoke about the mandate's effect of splitting the church between the worship

wing and the service wing. Do you remember that testimony?

A I do.

Q As executive director of Catholic Charities, is that consistent with your operation of the agency?

A Absolutely. When we—when we do the work that we do at Catholic Charities, we do it consistent with Catholic teaching. All of our employees, when they start with us, receive that as part of their orientation and every year they take a pledge to perform their duties in accord with Catholic teaching.

Q Is it possible to split the faith from service?

A No.

Q In Bishop Zubik's role as chairman of the membership board of Catholic Charities, has he followed that vision in overseeing Catholic Charities as an organization?

A He has.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q I have just a few questions. Catholic Charities currently provides health insurance to its employees, is that correct?

A It does.

Q And you testified that Catholic Charities has informed its TPA that it objects to coverage for contraceptive services and therefore doesn't want those services in the plan, correct?

A Correct, uh-huh.

Q And did it violate Catholic Charities' religious beliefs to inform the TPA of that?

[65]

A No.

Q You also keep track of who works at Catholic Charities and who doesn't?

A We do.

Q And you've informed the plan's TPA of who works for Catholic Charities so the TPA provides payment for services under the plan.

A Correct.

Q And does it violate your religious beliefs or Catholic Charities' religious beliefs to do that?

A No.

Q Do you know the percentage of Catholic Charities employees that share the religious beliefs of Catholic Charities?

A I do not. We don't ask our employees to share their faith with us. The only position that needs to be Catholic is my position.

Q And you don't know the percentage of employees who use contraceptives in their personal lives?

A I do not.

* * *

[Page 69]

[Testimony of Bishop Lawrence Persico]

Q I want to ask you a few questions about the co-plaintiffs in the Erie case. What is your role in

relation to St. Martin Center, Prince of Peace Center and Erie Catholic Preparatory School?

A In all three of those entities I am the chair of the board of members that has oversight over these entities.

Q Could you explain what oversight you have over these organizations as the chair of the membership committee?

A Well, it's my responsibility to insure that they are following the teachings, the philosophy, the doctrine of the Catholic church as they perform their services in the various parts of the Diocese where these centers are located.

Q Does this responsibility include conforming to the teachings of the Catholic church with respect to abortion, sterilization and contraception?

A Absolutely.

Q Is the role which you've just described for the Diocese of Erie generally and with regard to these three organizations consistent with governance documents of the Catholic church?

A Yes.

Q Let me show you what was marked earlier as Plaintiff's Exhibit 3. Do you recognize this document, Bishop Persico?

A I do.

Q Could you describe it for us, please.

A Okay. This is a Motu proprio, an epistolic letter by Pope Benedict XVI, issued just recently on November 11th, 2012. It's a relatively new document.

Q Do you, Bishop Persico, as the Bishop of the Diocese of Erie, do you agree with the provisions of this exhibit as they may apply to St. Martin Center, Prince of Peace, and Erie Catholic Preparatory School?

A Yes, I do.

Q Bishop Zubik talked about several of the provisions earlier, and we don't want to repeat that testimony. Do you agree with the statements of Bishop Zubik earlier?

A Yes, I do.

Q Are there any other provisions of this exhibit that are relevant to you or specifically instructive to you as the Bishop for the Diocese of Erie?

A Well, one aspect in particular would be the third paragraph, and it begins in the middle where it says: Although the Directory for the Pastoral Ministry of Bishops—this is a directory that the Holy Father issued in the past, and it was sort of guidelines, directions for Bishops, but here it goes into—where it says: Explore more specifically the duty of charity as a responsibility incumbent upon the whole church and upon the Bishop and his Diocese.

That is essential, that I have that responsibility to maintain the teaching of the church on faith and good works. And I think that that just re-enforces that whole aspect that the—the Holy Father is calling us to, which is found obviously in scripture and the teachings of the church.

Q In your role of governance of St. Martin Center, Prince of Peace and Erie Catholic, do you try

to follow and apply these directives to those organizations?

A I do.

Q Are there any other provisions in this exhibit that you'd like to highlight specifically?

THE COURT: We're on Exhibit 3, correct?

MR. GOETZ: Exhibit 3, yes, Your Honor.

THE WITNESS: Yes. Again, I think Bishop Zubik mentioned it, but it would be Article 10, Paragraph 3—

BY MR. GOETZ:

Q Article 10 or Article 4—

A Article 10, yes.

Q Article 10, okay.

A Yeah.

Q Go ahead, I'm sorry.

A And I think this goes to the heart of the matter, too. In particular, the Diocesan Bishop is to insure the charitable agencies dependent upon him do not receive financial support from groups or institutions that pursue ends contrary to the church's teaching. Similarly, lest scandal be given to the faithful, the Diocesan Bishop is to insure that these charitable agencies do not accept contributions—I'm sorry, that is not the one I wanted to point to.

Q Okay. Bishop Zubik talked about Article 4, Section 3. Do you see that?

A Ah, yes, that's the one I wanted to refer to.

Q Okay. Does this section have significance to you, Bishop Persico, as the Bishop for the Diocese of Erie; and, if so, how?

A Well, in the fact that the Diocesan Bishop is to insure, again, that there—what the agencies do, do not become a source of scandal.

Q Why does the Diocese of Erie operate organizations such as St. Martin Center, Prince of Peace, or Erie Catholic Preparatory School?

A The Diocese operates these agencies as a way in which we put our faith into action, that we have—that charity and education are really good works of our faith, so they are key and essential in living out our faith life.

Q Is it possible in your role as Bishop of Erie to divide the works of St. Martin Center, Prince of Peace, and Erie Catholic from the worship of the Catholic faith?

A Well, if we look at scripture, faith without good works is dead, so I don't see how we can separate it. It's essential. It's who we are as Christians.

Q Are St. Martin Center, Prince of Peace and Erie Catholic the only separately incorporated affiliates you oversee as the head of the Diocese of Erie?

A No, there are others, too.

Q Okay. Like such as? Can you give us some examples?

A That I have oversight over?

Q Types of NAs.

A The Diocesan Savings and Loan, there are—offhand, I can't think of the other ones.

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[Page 80]

Q In your view, Bishop Persico, can St. Martin Center, Prince of Peace, and Erie Catholic sign this self-certification form and otherwise participate in the accommodation process consistent with Catholic teaching?

A I don't see how we can do it.

Q Would signing the form in your view constitute the facilitation of evil?

A Absolutely.

Q Could you describe the impact on the religious organizations in Erie that the Government has—has put on them by the self-certification form.

A Well, just taking St. Martin Center and Prince of Peace Center, just as an example, they service the poor, the homeless. They provide for the needs of the people. Much of the funding that they receive is charitable contributions. If we don't sign this, then they're going to be forced to pay fines, fines that will limit their works of charity of, you know, feeding the—feeding the hungry, clothing the poor and naked; and I don't know how else they're going to be able to do that. That's just Prince of Peace down in Mercer County.

St. Martin Center in the County of Erie will be severely crippled in what it's able to do with these funds in its work of charity within Erie County and the City of Erie.

Q Would it be a burden on the exercise of your Catholic faith, Bishop Persico, to sign the self-certification form that you have in front of you as Exhibit 10?

MR. HUMPHREYS: Objection, calls for a legal conclusion.

THE COURT: Overruled. Again, you can have a standing objection.

MR. HUMPHREYS: Thank you.

THE WITNESS: I would have. I would have a real moral issue in signing that because I would be afraid of giving scandal to the faithful.

BY MR. GOETZ:

Q Would the burden of signing the form be substantial to your exercise of the Catholic faith?

A Well, it would. It would. For me, it would be a contradiction because I'm teaching one thing and then my action said something else.

Q You referenced the term "scandal." Is that what you mean by the term "scandal" under the Catholic faith?

A Well, to the people and the faithful it would seem as a contradiction, that I'm teaching one thing and behaving in another manner.

Q And what about the claim, Bishop Persico, that signing this form would only take a few minutes? Do you agree with that?

A It doesn't take a few—it—yes, it takes a few minutes to sign, but the ramifications are eternal.

Q Does the fact that if St. Martin Center, Prince of Peace and Erie Catholic go through the

accommodation process, won't actually have to bear the cost of the coverage, does that solve the moral dilemma in front of you now?

A If they sign?

Q Yes, and it doesn't cost them anything. Does that solve the dilemma?

A It's not about money. It's the moral teaching here that is at issue.

Q As the chairman of the membership board of the three organizations that we've discussed, can you direct the heads of those organizations to sign the self-certification form and trigger the accommodation process?

A If you're asking me that question right now, I would have a very difficult time in doing that. I don't see how I could.

Q And what is your understanding if they do not sign the form?

A They will be fined.

Q Couldn't these organizations just eliminate their health care coverage?

A They'll be fined.

Q Cardinal Dolan spoke about splitting the Catholic church under the final rule between a worship wing and a service wing. Do you agree with that testimony as applied to the Diocese of Erie?

A I do.

Q Is it possible in your role as Bishop for the Diocese of Erie to split the Catholic faith between a worship wing and a service wing?

A I think I would be going against scripture and teaching of the church when we're told that it's faith and good works. You don't have two separate, that they don't co-exist. It's all part of the same.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q The Diocese provides insurance to its own employees and to the employees of the other entities that are Plaintiffs in this case, is that correct?

A That is correct.

Q And prior to the issuance of these regulations challenged here, the Diocese informed the TPA, Highmark, that it did not intend to include coverage for contraceptive services; is that correct?

A That's correct.

Q And did informing the TPA of that violate the Diocese or the other entities' religious beliefs?

A No, because we informed them not to have that coverage.

Q Prior to the regulations, also, did the Diocese keep track of who works for the Diocese and for the other entity Plaintiffs?

A Yes.

Q And did you provide a list prior to the regulations of those employees to the TPA so they could determine who is on—

A Who would be covered, yes.

Q —who is on the Diocese plan and who is not?

THE COURT: Let him finish the question, first.

THE WITNESS: Okay.

THE COURT: Please.

THE WITNESS: Yes.

BY MR. HUMPHREYS:

Q And did you also inform the TPA, Highmark, when an employee was no longer in the Diocese or the other entities' employ?

A That's correct.

Q And did doing those things violate the Diocese or the other organizations' religious beliefs?

A No.

Q Do you know what percentage of the employees of St. Martin Center share the religious beliefs of St. Martin Center?

A I do not.

Q What about for Prince of Peace?

A I do not.

Q Catholic Preparatory School, Erie Catholic Preparatory School, do you know that information?

A I—I don't have numbers for that, no.

Q And for any of the employees of those entities do you know the percentage that actually use contraceptive services personally?

A No.

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[Page 87]

[Testimony of Father Scott Jabo]

DIRECT EXAMINATION

BY MR. DeJULIUS:

Q Good morning, Scott—Father Scott. Can you introduce yourself to the Court.

A My name is Father Scott Jabo.

Q And where are you currently employed?

A Erie Catholic Preparatory School in Erie, Pennsylvania.

Q Is that also known as Erie Catholic Prep?

A Yes, you can refer to it as Erie Catholic Prep.

Q Okay. What is Erie Catholic Prep?

A Erie Catholic Prep is a co-institutional college preparatory school, Catholic school, of the Diocese of Erie. It's a merged entity of Villa Maria Academy and Cathedral Preparatory School which merged to form a co-institutional—one school, two campuses—college preparatory school.

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[Page 94]

* * *

Q Have any of your employees ever asked for these objectionable services?

A I have never been asked by any of our employees.

Q Have any of your employees ever complained to you about not being provided these services in their health plan?

A Never.

Q Are you aware of any Erie Catholic Prep employee who has suffered negative health consequences as a result of the health plan not providing these objectionable services?

A No one.

Q Father, has anybody actually ever told you anything about the health plans?

A Actually, we get compliments about the good coverage that our employees get. Some of our employees got cancer, been in accidents, broken legs, they've been in the hospital for extended periods of time; their coverage they consider to be very good. It is one of the features that attract employees to our school, and it's a way of us taking care of our employees, and our employees have expressed their gratitude for the coverage that we provide to them.

* * *

[Page 98]

Q Does this type—or the decision to sign this form, does it fall underneath the Bishop's reserve powers?

A It is the Bishop. The Bishop would be the one who would give us permission or authority to sign this document.

Q Have you received permission from the Bishop to sign the certification form?

A I have not.

Q What will happen to Erie Catholic Prep if you don't sign the self-certification form?

A My understanding is that if we do not sign the self-certification form, that we will be heavily fined. My understanding is $100 per beneficiary per day

Q In a round about number, how much or what's the amount of fines that we would be talking about?

A We're talking, rough estimate, probably around $2.8 million per year.

Q What's the total operating budget for Erie Catholic Prep?

A Approximately $10 million per year.

Q So how would Erie Catholic Prep pay those fines?

A We would have no way of paying those fines. Our budget is balanced. We take care of every dollar that comes in, and we don't have extra money around. We have no way of paying fines like that.

Q What will happen if you get those fines, then?

A Well, the first steps in trying to react to those fines would be try to shut down some of our programs, lay off people, but that would only sustain us for a very short period of time. In essence we'd have to shut our doors completely because we cannot sustain ourselves. As a school with a budget, limited resources, we would close our doors.

Q Father, in your view what message would signing the self-certification form, participating in the accommodation process, send to your students and benefactors?

A As I mentioned, we are a Catholic school. I have the responsibility of insuring that everything we do as a school follows Catholic church teachings. Therefore, what we provide to our employees, health care, is important. We provide those services to our—health insurance to our employees. Signing this self-certification makes me a hypocrite because I'm teaching one thing, instilling in our students one thing, Catholic world teaching that we cannot

facilitate or participate in moral evil. We're very clear in instructing our students in that line of thinking, all of our students, part of what they receive throughout their formation of—at our school.

For me to sign this is now saying I'm teaching one thing, but I'm doing something else because I'm now facilitating or participating in moral evil. I would become a hypocrite and the school would become a hypocrisy, so it's a contradiction.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q You testified that the school does provide insurance for its employees, is that correct?

A That is correct.

Q And prior to the issuance of the regulations here, the school informed the TPA that it objects to providing contraceptive services.

A That is correct.

Q And did informing the TPA prior to the regulations violate the school's religious beliefs?

A It did not.

Q Prior to the regulations, did the—excuse me, did the school keep track of who works for it and who doesn't, who its employees are?

A Yes, it does.

Q And did the school provide a list of those employees to the TPA so the TPA could determine who is entitled to coverage under the plan?

A Yes.

Q And did the school inform the TPA when an employee was no longer in the Diocese employ—excuse me, in the school's employ?

A Yes, that's correct.

Q Do you know the percentage of the school's employees that share the school's religious beliefs?

A Meaning that they are Catholic?

Q Well—let's make it specific to shares the school's objection to contraceptive services.

A I don't know what percentage.

Q Do you know what percentage of the school's employees use contraceptives personally?

A I have no idea.

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[Page 102]

[Testimony of Mary Maxwell]

MR. DeJULIUS: One more witness, Your Honor. Call Mary Maxwell.

MARY CLAIRE MAXWELL, a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DeJULIUS:

Q Good morning, Miss Maxwell.

A Good morning.

Q Where are you currently employed?

A Catholic Charities of the Diocese of Erie.

Q And what's your title there?

A I am the executive director.

* * *

[Page 111]

Q Has the Diocesan plan always covered the employees of St. Martin Center and Prince of Peace Center?

A In my tenure it has; I don't know about before that.

Q And is the Diocesan plan consistent with Catholic teaching and doctrine?

A Yes.

Q Okay. And how do you believe the Diocesan plan is consistent with Catholic teaching and doctrine?

A We are—basically our teaching is about the sanctity of life, and everything in that policy is consistent with that teaching.

Q Now, Miss Maxwell, are you generally familiar with the Government's definition of preventive services?

A I am.

Q And are some portion of what the Government defines as preventive services inconsistent with Catholic doctrine?

A Yes.

Q How so?

A Well, there are basic provisions of that, the contraception, the sterilization, the abortifacients, and the counseling that is required that would be objectionable to Catholic teaching.

Q Has the Diocesan plan at Prince of Peace Center, St. Martin Center ever covered these services?

A Not to my knowledge.

Q Has any employee of St. Martin Center or Prince of Peace Center ever asked for these objectionable services?

A Not to my knowledge.

Q Has any employee of St. Martin Center or Prince of Peace Center complained about not having these objectionable services in their health plan?

A I have never heard of it if it's so.

Q Miss Maxwell, are you familiar with any Prince of Peace Center or St. Martin Center employee who has suffered negative health consequences as a result of the health plan's failure to include these objectionable preventive services?

A No.

* * *

[Page 115]

Q What will happen to Prince of Peace Center and St. Martin Center if they do not sign the self-certification form and participate in the accommodation?

A I understand they will be fined.

Q And do you have a ballpark figure about how big these fines would be?

A Combined, the agencies, would be several million.

Q And what is the operating budget for St. Martin Center?

A The operating budget is in the neighborhood of 5 million—4 million, excuse me. St. Martin Center is 4 million.

Q What about the operating budget for Prince of Peace Center?

A That is only 800,000.

Q So a significant portion of your funds would be spent on these fines, correct?

A They can't be spent on those fines; but, yeah, it would be a significant amount.

Q Well, what would happen to St. Martin Center, Prince of Peace Center if they were subject to these fines?

A If—if we were subject—this would be devastating. It would be—it would be devastating for all of our clients, the poor—these are single women, children. I didn't talk about our children's program, the elderly, populations that we haven't even talked about here. We have a significant refugee program. These are people who count on the Catholic church, who count on our agencies to listen and to do what we can to help them. And it would be drastic if—if these fines had to be dealt with.

It would—people would lose jobs. Our community of Erie counts on St. Martin Center. It—it would be devastating for all concerned, for our church. It just—it—it isn't something that we could cope with.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q It's true that St. Martin Center and Prince of Peace both provide health insurance to their employees, is that correct?

A Correct.

Q And prior to the issuance of the regulations, both St. Martin Center and Prince of Peace informed their TPA they did not want to provide contraceptive services in that coverage. Is that correct?

A Through our Diocesan office, yes.

Q Okay. And did informing the TPA of that fact violate either of the entities' religious beliefs?

A It—you mean informing them that these services are not acceptable, did that violate—

Q Exactly, yes, that's what I'm asking.

A Um, informing them that we cannot accept them did not violate our faith.

Q Right. So when you informed the TPA prior to the issuance of the regulations that St. Martin Center and Prince of Peace Center did not want to include contraceptive coverage on its plan to its insureds—excuse me—to its employees, that didn't—

A Correct.

Q —that didn't violate your religious beliefs, thank you.

And prior to the regulations, did Prince of Peace Center and St. Martin Center keep track of who works for each organization?

A Yes.

Q And were those entities required to inform the TPA of who works for them at any given time?

A Yes.

Q Did that violate the entities' religious beliefs to inform the TPA of who was working for them?

A No.

Q Did the entities have to inform the TPA when an employee left the employ of one of the two entities so the TPA could stop coverage?

A I'm sure.

Q And did that violate the religious beliefs of the entities to do that?

A No.

Q Do you know the percentage of employees at St. Martin Center who share the religious beliefs of the center itself?

A I do not know; we don't ask.

Q What about for Prince of Peace?

A Same answer.

Q And for the employees of either entity, do you know what percentage use contraceptive services personally?

A No.

* * *

[Page 134]

THE COURT: On behalf of the Defendant, what would you like to offer in the Defendants' case in chief?

MR. HUMPHREYS: Defendants have moved—ask to have moved into evidence the 16 exhibits in the exhibit list, Defendants' exhibits, which are all from the administrative record.

THE COURT: Any objection?

MR. GOETZ: No, Your Honor. D1 through D16 as listed on the joint exhibit list, we have no objection.

MR. HUMPHREYS: No further evidence, Your Honor.

THE COURT: You have no live testimony, is that correct?

MR. HUMPHREYS: That's correct.

THE COURT: So does the Defendant rest—Defendants rest their case in chief?

MR. HUMPHREYS: Yes, the Defendants rest their case in chief.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND DAVID A. ZUBIK, et al.,	Civil Action
Plaintiffs,	No. 13-1459 (Zubik)
vs.	
KATHLEEN SEBELIUS, et al.,	No. 13-303E
Defendants.	(Persico)

MOST REVEREND LAWRENCE T. PERSICO, et al.,
Plaintiffs,
vs.
KATHLEEN SEBELIUS, et al.,
Defendants.

Transcript of proceedings on November 13, 2013, United States District Court, Pittsburgh, Pennsylvania, before Arthur J. Schwab, District Judge

APPEARANCES:

For the Plaintiffs:	Paul M. Pohl, Esq. John D. Goetz, Esq. Leon F DeJulius, Esq. Ira M. Karoll, Esq. Mary Pat Stahler, Esq. Alison M. Kilmartin, Esq.
For the Defendants:	Brad P Humphreys, Esq.
Court Reporter:	Richard T. Ford, RMR, CRR 6260 U.S. Courthouse

Pittsburgh, PA 15219
(412) 261-0802

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription

* * *

[Page 54]

THE COURT: In your words, what do you believe are the sincerely held beliefs of the Plaintiff as it applies to this case?

MR. HUMPHREYS: I would be very hesitant to characterize Plaintiffs' own religious beliefs.

THE COURT: Does the Government accept the facilitation of evil tenet that we heard about as being a sincerely held belief?

MR. HUMPHREYS: We don't question that the Plaintiffs sincerely believe everything to which they testified yesterday, and, yes, that includes the facilitation of evil.

THE COURT: Does it include the belief that, as was testified, that signing the self-certification form would, according to their testimony, facilitate evil?

MR. HUMPHREYS: The Government has no reason to question that, Your Honor.

THE COURT: So what do you do with the substantial burden test as applies to Plaintiffs' sincerely held belief that signing the self-certification would facilitate evil?

MR. HUMPHREYS: I think you look at whether or not the test articulated by the Supreme Court, whether or not it, as I said, forces the Plaintiff to perform acts that are at odds with its religious beliefs

or if it requires one to substantially change one's behavior.

THE COURT: But does that then require—you need to help me understand. If it's sincerely held that signing that self-certification form violates their tenets, then requiring them to do that would put me in a position to be judging whether that's not it's sincerity, but whether that has any meaning.

MR. HUMPHREYS: I don't mean to suggest this is an easy task or an easy case, certainly not, but in looking at the statute, which this is a statutory question, not a constitutional question, we have to look at what Congress meant by using the words "substantial burden."

Now, yes, it's true that that incorporated a lot of pre-Smith free exercise jurisprudence, but I think Plaintiffs' alternate sort of understanding of what substantial burden means isn't particularly helpful either. They say it means only the penalties involved. But in that position the Court would also have to make difficult line-drawing decisions that is $100 substantial, is $10,000 substantial.

I think the better reading of that—and Plaintiffs haven't suggested any sort of amount of money that would not be substantial.

THE COURT: So are you saying that I—it is really I need to evaluate what's asked, and if signing a piece of paper to me seems like—that only takes a second to do, that what you are being required to do only takes a second or a minute or two pounds or whatever, that that's what the test is, that's what substantial is by how much time one needs to spend to do an act?

MR. HUMPHREYS: I wouldn't put it in terms of the time is the only factor, but I think that it's clear if the statute—excuse me, if the regulation requires nothing more than what you already did previously or what Catholic Charities already did, which is to inform its TPA that it objects, that continuing to do that same thing is not a substantial burden.

You can also look at the effect of what happens after you sign the certification to the degree that Catholic Charities will still not be required to contract for, pay for, or refer for any of the things to which they object to those services. Simply a third party is involved in the provision of the things to which they object, and RFRA can't be used as a sword to prevent the Government from creating alternate mechanisms to essentially protect the rights of employees and to make sure that they are receiving important services.

THE COURT: Okay. Let's now talk about least restrictive means.

MR. HUMPHREYS: Certainly.

THE COURT: Is that a label you're comfortable with or would you prefer to use a different one?

MR. HUMPHREYS: That's good, Your Honor.

THE COURT: What in the portion of the administrative record that's been put into evidence in this case, which are Defendants' exhibits, in those pages which are about two and a half inches thick, is there any discussion of alternatives to the accommodations? Is there anything that tells how—I mean, somebody came up with an accommodation. What were the other options, if any, that were considered? Why was accommodation chose as

opposed to broadening the definition of religious employer, as opposed to not requiring the form to be signed, but just telling every TPA in America if historically you have not provided X services, you just now need to do it on your own, but you don't need to contact the employer? Is there anything in those two and a half inches of paper that deal with that?

MR. HUMPHREYS: There is a discussion in the final rule of the Plaintiffs' least—the Government's least restrictive means analysis and why other proffered least means were not viable.

THE COURT: What exhibit is it, do you know?

MR. HUMPHREYS: I can find it.

THE COURT: Do you know the exhibit number?

MR. HUMPHREYS: It should be Exhibit No. 1, Your Honor.

THE COURT: You said Defendants' Exhibit 1?

MR. HUMPHREYS: Yes, Your Honor. That would be on Page 39,888, starting at the very beginning of the page with fifth.

THE COURT: Thank you. Anyplace else in the Plaintiffs' exhibits?

MR. HUMPHREYS: Not that I am aware of at the moment, Your Honor, but I may submit it in supplemental briefing that is due this Friday if that's okay with you.

THE COURT: It uses the expression on Page 39,888, quote, all of these proposals were considered, close quote.

Now, where is the documentation as to that consideration?

MR. HUMPHREYS: Well, this is the documentation, Your Honor. I mean, the policy makers in considering the comments submitted in response to the requests for notice and comment conducted that analysis.

I mean, I think what's important to recognize here in the discussion is that in the analysis the Defendants lack statutory authority to make the changes that were proffered in the notice and comment period. The statute itself requires, and Congress required, that the provision of preventive services work through the employee based system.

THE COURT: All right. So, is the Government's position that because of the way the statute is written, the ACA, that no other means were available but for the accommodation?

MR. HUMPHREYS: Certainly none of the means that Plaintiffs put forth that would not involve employer—that it would be based on the existing employer based system. So, yes, Congress said that preventive services have to come through—have to be required by employer plans, and then the Defendants developed an accommodation such that the employee—excuse me, the employers could fulfill that obligation through the self-certification mechanism, and the TPA then comes in and provides the services to the employees themselves. But it still works within that employer based framework.

THE COURT: Wasn't another alternative to broaden the definition of religious employer? I am not saying that that should have been adopted, but why isn't that another alternative?

MR. HUMPHREYS: That would not be less restrictive. It would not—in order to be less restrictive means, that means still has to satisfy or it has to fulfill the Government's compelling interest to further it. Simply broadening the religious employer exemption to cover a larger group of employers would not do that because then those employees would not have access to the services that Congress considered important. If you have no further questions, Your Honor?

* * *

No. 14-1453

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #:
1:13-cv-01261-EGS

PRIESTS FOR LIFE et al v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES et al	Date Filed: 08/19/2013
Assigned to: Judge Emmet G. Sullivan	Date Terminated: 12/20/2013
Case in other court: 13-05368	Jury Demand: None
Cause: 42:2000 Religion	Nature of Suit: 440 Civil Rights: Other
	Jurisdiction: U.S. Government Defendant

08/19/2013	1	COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0090-3437070) filed by ALVEDA KING, FRANK PAVONE, JANET MORANA, PRIESTS FOR LIFE. (Attachments: # *1* Civil Cover Sheet, # *2* Summons U.S. Department of Health & Human Services, # *3* Summons HHS Secretary Kathleen Sebelius, # *4* Summons U.S. Department of the Treasury, # *5* Summons Treasury Secretary Jacob J. Lew, # *6* Summons U.S. Department of Labor, # *7* Summons Labor Secretary Thomas E. Perez, # *8* Summons U.S. Attorney General, # *9* Summons U.S. Attorney) (Muise, Robert) (Entered: 08/19/2013)

* * *

09/19/2013 7 MOTION for Preliminary Injunction by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Attachments: # *1* Exhibit 1—Declaration of Father Pavone / Priests for Life, # *2* Exhibit *2*—Declaration of Dr. Alveda King, # *3* Exhibit 3—Declaration of Janet Morana, # *4* Text of Proposed Order) (Muise, Robert) (Entered: 09/19/2013)

* * *

10/01/2013 8 MOTION for Summary Judgment by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Attachments: # *1* Statement of Facts, # *2* Exhibit Declaration of Robert J. Muise with Exhibits A through D) (Muise, Robert) (Entered: 10/01/2013)

* * *

10/17/2013 12 ADMINISTRATIVE RECORD Notice of Filing by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # *1* Certification of Administrative Record, # *2* Index of Administrative Record) (Berwick, Benjamin)

(Entered: 10/17/2013)

10/17/2013 13 Memorandum in opposition to re *8* MOTION for Summary Judgment filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # *1* Statement of Facts Defendants' Response to Plaintiffs' Statement of Facts) (Berwick, Benjamin) (Entered: 10/17/2013)

10/17/2013 14 MOTION to Dismiss, MOTION to Dismiss for Lack of Jurisdiction, Cross MOTION for Summary Judgment by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # *1* Statement of Facts, # *2* Memorandum in Support, # *3* Text of Proposed Order) (Berwick, Benjamin) (Entered: 10/17/2013)

* * *

10/25/2013 18 AMICUS BRIEF by AMERICAN CIVIL LIBERTIES UNION. (jf,)

(Entered: 10/27/2013)

* * *

10/31/2013	19	RESPONSE re *14* MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Attachments: # *1* Statement of Facts Plaintiffs' Response to Defendants' Statement of Material Facts, # *2* Exhibit 5—Supplemental Declaration of Priests for Life, # *3* Exhibit 6—Supplemental Declaration of Robert J. Muise w/ Exhibits A through D)(Muise, Robert) Modified on 10/31/2013 (jf,). (Entered: 10/31/2013)
10/31/2013	20	REPLY to opposition to motion re *8* MOTION for Summary Judgment filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Muise, Robert) (Entered: 10/31/2013)

* * *

11/12/2013	22	SUPPLEMENTAL MEMORANDUM to re Order, *directing the parties to address the impact of Gilardi v U.S. Dep't of Health & Human Services on the case* filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Muise, Robert) (Entered: 11/12/2013)

11/12/2013	23	REPLY to opposition to motion re 14 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction Cross MOTION for Summary Judgment filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Berwick, Benjamin) (Entered: 11/12/2013)

* * *

11/19/2013	24	NOTICE OF SUPPLEMENTAL AUTHORITY by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Muise, Robert) (Entered: 11/19/2013)
11/25/2013	25	NOTICE OF SUPPLEMENTAL AUTHORITY by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Muise, Robert) (Entered:11/25/2013)
11/25/2013	26	RESPONSE re 24 NOTICE OF SUPPLEMENTAL AUTHORITY filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT

OF THE TREASURY. (Berwick, Benjamin) (Entered: 11/25/2013)

* * *

12/02/2013 27 RESPONSE re *25* NOTICE OF SUPPLEMENTAL AUTHORITY filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Berwick, Benjamin) (Entered: 12/02/2013)

12/02/2013 28 SUPPLEMENTAL MEMORANDUM to re Order, *directing the parties to address the impact, vel non, of the U.S. Supreme Court granting petitions for writs of certiorari in Hobby Lobby & Conestoga* cases filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Muise, Robert) (Entered: 12/02/2013)

12/03/2013 29 RESPONSE TO ORDER OF THE COURT re Order, *directing the parties to address the impact, vel non, of the U.S. Supreme Court granting petitions for writs of certiorari in Hobby Lobby & Conestoga* cases filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT

		OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY (Berwick, Benjamin) (Entered: 12/03/2013)
		* * *
12/09/2013		Minute Entry for proceedings held before Judge Emmet G. Sullivan. Motion Hearing held on 12/9/2013 re *14* MOTION to Dismiss *8* MOTION for Summary Judgment and *7* MOTION for Preliminary Injunction. (Court Reporter BRYAN WAYNE.) (mac) (Entered: 12/09/2013)
		* * *
12/13/2013	31	SUPPLEMENTAL MEMORANDUM to re Order, filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Berwick, Benjamin) (Entered: 12/13/2013)
12/16/2013	32	SUPPLEMENTAL MEMORANDUM to re Order, filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Muise, Robert) (Entered: 12/16/2013)
12/16/2013	33	NOTICE OF SUPPLEMENTAL AUTHORITY by ALVEDA KING,

JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Attachments: # 1 Memorandum Decision & Order)(Muise, Robert) (Entered: 12/16/2013)

12/17/2013 34 RESPONSE re 33 NOTICE OF SUPPLEMENTAL AUTHORITY filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Berwick, Benjamin) (Entered: 12/17/2013)

12/19/2013 35 ORDER granting 14 Defendants' Motion to Dismiss; denying as moot 8, 14 the parties' cross motions for summary judgment. Signed by Judge Emmet G. Sullivan onDecember 19, 2013. (lcegs4) (Entered: 12/19/2013)

12/19/2013 36 MEMORANDUM AND OPINION. Signed by Judge Emmet G. Sullivan on December 19, 2013. (lcegs4) (Entered: 12/19/2013)

12/19/2013 37 NOTICE OF APPEAL TO DC CIRCUIT COURT as to *35* Order on Motion for Preliminary Injunction, Order on Motion for Summary Judgment, Order on Motion to Dismiss, Order on Motion to Dismiss/Lack of Jurisdiction, by

ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. Filing fee $ 505, receipt number 0090–3570500. Fee Status: Fee Paid. Parties have been notified. (Muise, Robert) (Entered: 12/19/2013)

* * *

GENERAL DOCKET
UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT

Court of Appeals Docket #: 13-15368	**Docketed:** 12/19/2013
Nature of Suit: 2440 Other Civil Rights Priests For Life, et al v. HHS, et al.	**Termed:** 11/14/2014
Appeal From: United States District Court for the District of Columbia	

Current Cases:

	Lead	Member	Start	End
Cross-appeal				
	13-5368	13-5371	01/23/2014	
	13-5368	14-5021	01/23/2014	

12/19/2013 US CIVIL CASE docketed. [13-5368]

12/19/2013 NOTICE OF APPEAL filed [1471416] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life seeking review of a decision by the U.S. District Court in 1:13-cv-01261-EGS. Assigned USCA Case Number [13-5368]

* * *

12/20/2013 *EMERGENCY* MOTION filed [1471703] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life for injunction. (Response to Motion served by mail due on 01/02/2014) [Service Date: 12/20/2013 by CM/ECF NDA] Pages: 16-20. [13-5368] (Muise, Robert)

12/20/2013 PER CURIAM ORDER filed [1471854] consideration of the emergency motion for injunction pending appeal, it is ORDERED that appellees file a response to the emergency motion for injunction [1471703-2] by noon on Tuesday, 12/24/2013. Appellants shall file any reply by 10:00 a.m. on Friday, 12/27/2013. The parties are directed to hand deliver the paper copies of their submissions to the court by the time and date. Before Judges: Henderson, Brown and Tatel. [13-5368]

12/24/2013 RESPONSE IN OPPOSITION FILED [1472281] by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA to motion for injunction [1471703-2] [Service Date: 12/24/2013 by CM/ECF NDA] Pages 16-20. [13-5368] (Jed, Adam)

12/26/2013 REPLY FILED [1472593] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life to response [1472281-2] [Service Date: 12/26/2013 by CM/ECF NDA] Pages: 1 10. [13-5368] (Muise, Robert)

12/27/2013 LETTER FILED [1472702] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life pursuant to FRAP 28j advising of additional authorities [Service Date: 12/27/2013] [13-5368] (Muise, Robert)

12/30/2013 LETTER FILED [1472900] by Jacob J.

Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/30/2013] [13-5368] (Jed, Adam)

12/30/2013 LETTER FILED [1473102] by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/31/2013] [13-5368] (Jed, Adam)

12/31/2013 PER CURIAM ORDER filed [1473216] granting emergency motions for injunction [1471703-2], [1471948-2]; consolidating cases 13-5371 (Consolidation started 12/31/2013) with 13-5368; directing that appellants show cause why they should not be required to file one joint opening brief limited to 14,000 words and one joint reply brief limited to 7,000 words. Response to Order due 01/14/2014. Before Judges: Henderson, Tatel,* and Brown. (*Circuit Judge Tatel would deny the emergency motions for injunction pending appeal for the reasons in the attached statement.) [13-5368, 13-5371]

* * *

01/14/2014 LETTER filed [1475847] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and

placed on the docket on 01/14/2014 as No. 13-829. [13-5371, 13-5368]

01/23/2014 CLERK'S ORDER filed [1476407] consolidating case 14-5021 (Cross-appeal started 01/23/2014) with 13-5368 [13-5368, 13-5371, 14-5021]

* * *

01/27/2014 LETTER filed [1477875] b the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 01/27/2014 as No. 13-891. [13-5368, 13-5371, 14-5021]

* * *

02/28/2014 *JOINT* APPELLANT BRIEF [1482089] filed by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. in 13-5371, Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368 [Service Date: 02/28/2014] Length of Brief: 15,975 words. [13-5371,

13-5368, 14-5021] (Francisco, Noel)

02/28/2014 *JOINT* APPENDIX [1482090] filed by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, Victory Housing, Inc. and DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, Thomas Aquinas College, HHS and TREA in 13-5371, Alveda King, Janet Morana, Father Frank Pavone, Priests For Life and Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA in 13-5368, DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, TREA and Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman

Catholic Archbishop of Washington, Thomas Aquinas College and Victory Housing, Inc. in 14-5021. [Volumes: 2] [Service Date: 02/28/2014] [13-5371, 13-5368, 14-5021] (Francisco, Noel)

* * *

03/07/2014 *CORRECTED* AMICUS FOR APPELLANT BRIEF [1482856] filed by American Bible Society, Association of Christian Schools International, Association of Rescue Gospel Missions, Christian Legal Society, Ethics and Religious Liberty Commission of the Southern Baptist Convention, Institutional Religious Freedom Alliance, Lutheran Church-Missouri Synod, National Association of Evangelicals and Prison Fellowship Ministries in 13-5368, 13-5371 [Service Date: 03/07/2014] Length of Brief: 6,888. [13-5368, 13-5371, 14-5021] (Colby, Kimberlee)

03/14/2014 CLERK'S ORDER filed [1484058] scheduling oral argument before Judges BROWN, GRIFFITH, MILLETT on Tuesday, 05/13/2014 [13-5368, 13-5371, 14-5021]

3/28/2014 APPELLEE & CROSS-APPELLANT BRIEF [1486033] filed by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA in 13-5368, DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA in

13-5371, 14-5021 [Service Date: 03/28/2014] Length of Brief: 13,815 words. [13-5368, 13-5371, 14-5021] (Jed, Adam)

03/31/2014 LETTER filed [1486592] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 13-829: The petition for writ of certiorari before judgment was denied on 03/31/2014. [13-5371, 13-5368, 14-5021]

03/31/2014 LETTER filed [1486593] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 13-891: The petition for writ of certiorari before judgment was denied on 03/31/2014. [13-5368, 13-5371, 14-5021]

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04/02/2014 MODIFIED EVENT FROM FILED TO LODGED—AMICUS FOR APPELLEE BRIEF [1486692] LODGED by Americans United for Separation of Church and State [Service Date: 04/02/2014] Length of Brief: 6,928 Words. [13-5371, 13-5368, 14-5021]—[Edited 04/03/2014 by AY] (Khan, Ayesha)

04/03/2014 MODIFIED PARTY FILER—MOTION filed [1486791] by Service Employees International Union, Raising Womens Voices for the Health Care We Need, Population Connection, Planned

Parenthood of Metropolitan Washington, DC, Inc., Planned Parenthood of Maryland, Inc., Planned Parenthood Federation of America, National Partnership for Women and Families, National Organization for Women Foundation, NARAL Pro-Choice America, MergerWatch, Ibis Reproductive Health, American Federation of State, County and Municipal Employees, American Association of University Women and National Womens Law Center in 13-5368, 13-5371, 14-5021 to participate as amicus curiae. [Disclosure Listing: Attached] [Service Date: 04/03/2014] [13-5368, 13-5371, 14-5021] —[Edited 04/03/2014 by LMC] (Davidow, Charles)

04/04/2014 MODIFIED PARTY FILER—MOTION filed [1487033] by California Women's Law Center, National Women and AIDS Collective, HIV Law Project, Sexuality Information and Education Council of the U.S., Ipas, Forward Together, Black Women's Health Imperative, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice– Los Angeles, Asian Americans Advance Justice–AAJC, National Asian Pacific American Women's Forum, National Latina Institute for Reproductive Health, National Women's Health Network, National Family Planning &

Reproductive Health Association, American Public Health Association and National Health Law Program in 13-5368, 13-5371, 14-5021 to participate as amicus curiae. [Disclosure Listing: Attached] [Service Date: 04/04/2014] [13-5368, 13-5371, 14-5021]—[Edited 04/04/2014 by LMC] (Perkins, Martha)

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04/04/2014 PER ABOVE ORDER lodged Amicus brief [1487122-2], Amicus brief [1487082-2], Amicus brief [14-86692-2] is filed [13-5368, 13-5371, 14-5021]

04/10/2014 PER CURIAM ORDER filed [1487771] granting the motion of National Health Law Center, et al. to participate as amici curiae [1487033-2], granting the motion of National Women's Law Center, et al. to participate as amici curiae [1486791-2], granting the motion of Americans United for Separation of Church and State to participate as amici curiae [1486691-2]; The Clerk is directed to file the lodged Amici briefs [1487122-2], [1487082-2], [1486692-2] Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

04/11/2014 *JOINT* APPELLANT REPLY AND CROSS APPELLEE BRIEF [1488135] filed by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc.,

Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. in 13-5371, Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 [Service Date: 04/11/2014] Length of Brief: 7,998 words. [13-5371, 13-5368, 14-5021] (Francisco, Noel)

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05/08/2014 ORAL ARGUMENT HELD before Judges Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

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06/12/2014 LETTER FILED [1497364] by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA in 13-5368, DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/12/2014] [13-5368, 13-5371, 14-5021] (Jed, Adam)

06/16/2014 *JOINT* LETTER FILED [1497876] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Arcndiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College and HHS in 13-5371, Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of

the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/16/2014] [13-5371, 13-5368, 14-5021] (Francisco, Noel)

06/30/2014 *JOINT* LETTER FILED [1500113] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/30/2014] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

06/30/2014 JOINT LETTER FILED [1500114] by Alveda King, Janet Morana, Father Frank Pavone, Priests For Life and

Sylvia Mathews Burwell in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/30/2014] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

07/08/2014 LETTER FILED [1501429] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371

pursuant to FRAP 28j advising of additional authorities [Service Date: 07/08/2014] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

08/22/2014 LETTER FILED [1509018] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 08/22/2014] [13-5368, 13-5371, 14-5021] (Barbero, Megan)

08/26/2014 LETTER FILED [1509274] by Sylvia Mathews Burwell, DOL, Jacob J. Lew and Thomas E. Perez in 13-5371, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 08/26/2014] [13-5368, 13-5371, 14-5021] (Klein, Alisa)

09/02/2014 PER CURIAM ORDER filed [1510195] ORDERED, on the court's own motion, that appellants/cross-appellees and appellees/cross-appellants are directed to file supplemental briefs on the impact on this appeal of those authorities, including but not limited to Burwell v. Hobby Lobby, 134 S. Ct. 2751 (2014), Wheaton College v. Burwell, 134 S. Ct. 2806 (2014), and the

Interim Final Rules published and in effect as of August 27, 2014 ("interim rules"), see Coverage of Certain Preventive Services Under the Affordable Care Act, 79 Fed. Reg. 51092 (Aug. 27, 2014). While not otherwise limited, the parties are directed to address the following issues: (1) The effect, if any, of the interim rules on the plaintiffs' RFRA claims, including how the amendment of the regulations by the interim rules affects the substantial burden analysis; and (2) Whether the Supreme Court's recent decisions and the interim rules affect the analysis of whether the challenged regulations further any compelling government interest(s) and whether they constitute the least restrictive means of so doing. The supplemental briefs may not exceed 6,250 words and are due on or before September 16, 2014. The parties are directed to hand-deliver paper copies of their submissions to the court on the date due. Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

09/16/2014 *JOINT* APPELLANT SUPPLEMENTAL BRIEF [1512508] filed by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc.,

Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371 [Service Date: 09/16/2014] Length of Brief: 6,249 words. [13-5368, 13-5371, 14-5021] (Francisco, Noel)

09/16/2014 APPELLEE & CROSS-APPELLANT SUPPLEMENTAL BRIEF [1512536] filed by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 [Service Date: 09/16/2014] Length of Brief: 5,180 words. [13-5368, 13-5371, 14-5021] (Jed, Adam)

09/17/2014 LETTER FILED [1512821] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 09/17/2014] [13-5368, 13-5371, 14-5021] (Jed, Adam)

11/14/2014 PER CURIAM JUDGMENT filed [1522268] that the judgment of the District Court appealed from in case No. 13-5368 be affirmed; and the judgment of the District Court appealed in case Nos. 13-5371 and 14-5021 be vacated with respect to the grant of summary judgment for Thomas Aquinas College and its holding as to the unconstitutionality of the non-interference provision, and be affirmed as to the remainder of the decision for the reasons in the accompanying opinion. Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

11/14/2014 OPINION filed [1522271] (Pages: 86) for the Court by Judge Pillard [13-5368, 13-5371, 14-5021]

* * *

12/26/2014 *JOINT* PETITION filed [1529249] by Appellants Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Appellants Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School,

Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Appellee Thomas Aquinas College in 13-5371, Appellees Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 for rehearing en banc. [Service Date: 12/26/2014 by CM/ECF NDA] Pages: 21—30. [13-5368, 13-5371, 14-5021] (Francisco, Noel)

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01/15/2015 RESPONSE FILED [1532352] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 to petition for rehearing en banc [1529249-2] [Service Date: 01/15/2015 by CM/ECF NDA] Pages: 21-30. [13-5368, 13-5371, 14-5021] (Jed, Adam)

02/12/2015 LETTER FILED [1537422] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 02/12/2015] [13-5368, 13-5371, 14-5021] (Jed, Adam)

02/18/2015 LETTER FILED [1537940] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth

Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 02/18/2015] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

03/10/2015 JOINT LETTER FILED [1541563] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School,

Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 03/10/2015] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

03/11/2015 LETTER FILED [1541833] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 03/11/2015] [13-5368, 13-5371, 14-5021] (Klein, Alisa)

05/04/2015 *JOINT* LETTER FILED [1550499] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371

pursuant to FRAP 28j advising of additional authorities [Service Date: 05/04/2015] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

05/05/2015 RESPONSE FILED [1550939] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 to letter Rule 28j authorities [1550499-2], letter [1550499-3] [Service Date: 05/05/2015 by CM/ECF NDA] Pages: 1 10. [13-5368, 13-5371, 14-5021] (Jed, Adam)

05/20/2015 PER CURIAM ORDER, En Banc, filed [1553491] denying appellants/cross-appellees' joint petition for rehearing en banc [1529249-2]. Before Judges: Garland, Henderson, Rogers, Tatel, Brown**, Griffith, Kavanaugh**, Srinivasan*, Millett*, Pillard and Wilkins (* Circuit Judges Srinivasan and Millett did not participate in this matter. ** Circuit Judges Brown and Kavanaugh would grant the petition.) [13-5368, 13-5371, 14-5021]

05/20/2015 Publishing En Banc Order [1553491-2]. [13-5368, 13-5371, 14-5021]

05/22/2015 MOTION filed [1553911] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc.,

Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 to stay mandate (Response to Motion served by mail due on 06/04/2015) [Service Date: 05/22/2015 by CM/ECF NDA] Pages: 16—20. [13-5368, 13-5371, 14-5021] (Francisco, Noel)

* * *

06/10/2015 PER CURIAM ORDER filed [1556699] granting the motion to stay mandate pending petition for writ of certiorari

[1553911-2]. The Clerk is directed to withhold the mandate through August 26, 2015. If, within the period of the stay, appellants/cross-appellees notify the Clerk of writing that a petition for writ of certiorari has been filed, the Clerk is directed to withhold issuance of the mandate pending the Supreme Court's final disposition. See Fed. R. App. R. 41(d)(2)(B); D.C. Cir. Rule 41(a)(2). Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

06/11/2015 LETTER FILED [1557057] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368 notifying Clerk per Court's order granting stay of mandate that petition for writ of certiorari was filed. [Service Date: 06/11/2015] [13-5368, 13-5371, 14-5021] (Muise, Robert)

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06/22/2015 LETTER FILED [1558950] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of

Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 regarding case status [Service Date: 06/22/2015] [13-5371, 14-5021] (Francisco, Noel)

06/24/2015 LETTER received [1559437] from the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 06/22/2015 as No. 14-1505. [13-5371, 13-5368, 14-5021]

11/06/2015 LETTERS [1582951] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case Nos. 14-1453 and 14-1505: The petitions for writ of certiorari were granted on 11/06/2015. [13-5368, 13-5371, 14-5021]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PRIESTS FOR LIFE, *et al.*, Plaintiffs, -v- DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Case No. 1:13-cv-01261-EGS **DECLARATION OF FATHER FRANK PAVONE AND PRIESTS FOR LIFE**

I, Father Frank Pavone, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge. I also make this declaration on behalf of Priests for Life and thus based on information known by me and information provided to me by the organization.

1. I am an adult citizen of the United States and a plaintiff in this case.

2. I am an ordained, Roman Catholic priest and the National Director of Priests for Life. I am currently covered under Priests for Life's health care plan.

3. Priests for Life is a nonprofit corporation that is incorporated under the laws of the State of New York. It is recognized by the Internal Revenue Service as a Section 501(c)(3) organization. Priests for Life is a religious organization. However, it is *not* a church or a religious order. In short, it is not an organization that is referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

Consequently, Priests for Life is not a "religious employer" for purposes of the contraceptive services mandate of the Patient Protection and Affordable Care Act (hereinafter "Affordable Care Act" or "Act") and is therefore *not* exempt from the contraceptive services mandate.

4. As part of its commitment to Catholic social teaching, Priests for Life promotes the health and well-being of its employees. In furtherance of this commitment, Priests for Life provides health insurance for its employees through an insurer.

5. Priests for Life's health care plan is not a "grandfathered" plan under the Affordable Care Act for multiple reasons, including, but not limited to, the following: (1) the health care plan does not include the required "disclosure of grandfather status" statement; (2) Priests for Life does not take the position that its health care plan is a grandfathered plan and thus does not maintain the records necessary to verify, explain, or clarify its status as a grandfathered plan nor will it make such records available for examination upon request; and (3) the health care plan has an increase in a percentage cost-sharing requirement measured from March 23, 2010.

6. Priests for Life ensures that its insurance policies do not cover, promote, or provide access to drugs, devices, services, or procedures inconsistent with its faith, including contraception.

7. Priests for Life cannot provide health insurance that supports, whether directly or indirectly, artificial contraception, sterilization, abortifacients, abortion, or related education and

counseling without violating its sincerely held religious beliefs.

8. Priests for Life cannot provide health insurance that provides access to and makes available contraception, sterilization, abortifacients, abortion, or related education and counseling without violating its sincerely held religious beliefs.

9. Priests for Life cannot provide information or guidance to its employees about other locations at which they can access artificial contraception, sterilization, abortifacients, abortion, or related education and counseling without violating its sincerely held religious beliefs.

10. In sum, neither Priests for Life nor I can facilitate, promote, or support in any way, whether directly or indirectly, the federal government's objective of promoting and increasing the use of contraceptive services without violating our sincerely held religious beliefs.

11. Priests for Life is funded almost exclusively through tax-deductible donations. Donors who give to Priests for Life do so with an understanding of Priest for Life's mission and with the assurance that Priests for Life will continue to adhere to, disseminate, and report reliable Catholic teaching on the sanctity of life and human sexuality.

12. Priests for Life cannot use donated funds for purposes known to be morally repugnant to its donors and in ways that would violate the implicit trust of the purpose for their donations, such as using these funds to facilitate, promote, or support in any way the use of contraceptive services.

13. Priests for Life's next plan year will commence on January 1, 2014.

14. Through my association with Priests for Life, I engage in various expressive activities to advance and promote Priests for Life's religious mission, which includes, at its core, spreading the Gospel of Life. This activity is a religious exercise for me, as I am called by my priestly vocation to evangelize and spread the Gospel of Life.

15. The Gospel of Life, which is an expression of the Catholic Church's position and central teaching regarding the value and inviolability of human life, affirms and promotes the culture of life and actively opposes and rejects the culture of death. Contraception, sterilization, abortifacients, and abortion are all instruments of the culture of death, and their use can never be approved, endorsed, facilitated, promoted, or supported in any way.

16. The contraceptive services mandate of the Affordable Care Act requires coverage for, and promotes the use of, all Food and Drug Administration ("FDA") approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity. FDA approved contraceptive methods include devices and procedures, birth control pills, prescription contraceptive devices, Plan B (also known as the "morning after pill"), and ulipristal (also known as "ella" or the "week after pill"). Plan B and ella, as well as certain intrauterine devices ("IUD"), can prevent the implantation of a human embryo in the wall of the uterus and can thus cause the death of an embryo, thereby operating as

abortifacients. See a true and correct copy of the FDA's Birth Control Guide, attached to this declaration as Exhibit A. All of these FDA approved methods and procedures are gravely immoral and contrary to Priests for Life's and my sincerely held religious beliefs.

17 To advance the mission of Priests for Life and, ultimately, the mission of the Church, I often use the media of television, radio, and the printed press to promote the culture of life. For example, I host the *Defending Life* television series on the Eternal Word Television Network (EWTN). Indeed, my life and my vocation are dedicated to spreading the Gospel of Life and thus building a culture of life.

18. Consequently, I strongly object to the federal government forcing Priests for Life, the organization with which I associate and through which I tirelessly work to build the culture of life, to provide or facilitate, whether directly or indirectly, *any* support for, or access to, contraception, sterilization, and abortifacients and related education and counseling based on my sincerely held religious beliefs. Further, I strongly object to the federal government forcing Priests for Life to facilitate, support, or cooperate in any way with the government's immoral objective of promoting the use of contraceptive services—an objective that is squarely at odds with my religious beliefs and which directly undermines the very work that I do.

19. Priests for Life is a private association of the faithful, recognized and approved under the Canon Law of the Catholic Church. It works in harmony

with the goals of the Bishops' Pro-Life Committee and the local diocesan respect life offices.

20. Priests for Life was founded in 1991 to do one of the most important tasks in the Church today: to help spread the Gospel of Life.

21. The mission of Priests for Life is to unite and encourage all clergy to give special emphasis to the life issues in their ministry. It also seeks to help them take a more vocal and active role in the pro-life movement. *Priests for Life exists to fight the culture of death.*

22. Pursuant to its Mission Statement, Priests for Life seeks to: (1) unite, encourage, and provide ongoing training to priests and deacons who give a special emphasis to the "life issues," especially abortion and euthanasia, in their ministries; (2) instill a sense of urgency in all clergy to teach about these issues and to mobilize their people to help stop abortion and euthanasia; (3) assist clergy and laity to work together productively for the cause of life; and (4) provide ongoing training and motivation to the entire pro-life movement.

23. Priests for Life offers a wide range of audios, videos, and brochures, and regularly uses the media of television, radio, and the printed press to spread the message of life.

24. As the National Director of Priests for Life, I, along with my associates, including Dr. Alveda King and Ms. Janet Morana, travel the country full time to meet with priests, pro-life groups, and others to express, teach, and spread the Gospel of Life.

25. As the primary spokesman for Priests for Life, I use the media of television, radio, and the printed

press to spread Priests for Life's message of life. Through my media appearances and other expressive activities, I promote the culture of life and actively oppose the culture of death and its support for contraception, sterilization, abortifacients, and abortion.

26. Priests for Life, a Catholic organization, is morally prohibited based on its sincerely held religious convictions from cooperating with evil. Priests for Life objects to being forced by the federal government to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by its religious convictions. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Priests for Life. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And Priests for Life objects to the federal government forcing it into a moral dilemma with regard to its relationship with its employees and associates, including Dr. King, Ms. Morana, and me. Indeed, the contraceptive services mandate of the federal government threatens the very survival of Priests for Life as an effective, pro-life organization.

27. Priests for Life has a moral and religious obligation to resist and oppose actions designed to advance and promote the use of contraceptive services. As such, Priests for Life will not submit to any requirements imposed by the federal government that will promote the use of contraceptive services, including any requirement to provide a "self-certification" to its insurer that will then trigger the insurer's obligation to make "separate payments for

contraceptive services directly for plan participants and beneficiaries" of Priests for Life's health care plan.

28. Pursuant to its moral and religious obligations, Priests for Life will not provide any notice or information to its insurer, its employees, or to the beneficiaries of its health care plan that is designed to promote or facilitate the use of contraceptive services.

29. Therefore, by refusing to cooperate with, and thus facilitate, the government's immoral contraceptive services scheme and objective and by further refusing to provide coverage in its health care plan for immoral contraceptive services and related education and counseling required by the mandate, all based on its sincerely held religious beliefs, Priests for Life will be subject to crippling fines of $100 per day per employee.

30. Priests for Life and I hold and actively profess religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. In particular, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, we believe that human sexuality has two primary purposes: to "most closely unit[e] husband and wife" and "for the generation of new lives." We believe and actively profess the Catholic Church teaching that "[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will." Therefore, we believe and teach that "any action which either before, at the

moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means"—including contraception and sterilization—is a grave sin.

31. Priests for Life and I believe, as Pope Paul VI prophetically stated in *Humanae Vitae*, that "man, growing used to the employment of anticonceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion." Consequently, we believe and profess that the contraceptive services mandate harms women physically, emotionally, morally, and spiritually.

32. Priests for Life and I also hold and actively profess religious beliefs that include traditional Christian teaching on the sanctity of life. We believe and teach that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, we believe and teach that abortion, which includes abortifacients, ends a human life and is a grave sin.

33. Further, we subscribe to authoritative Catholic teaching about the proper nature and aims of healthcare and medical treatment. For example, we believe, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "'[c]ausing death can never be considered a form of medical treatment," but rather "runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

34. Based on the teaching of the Catholic Church, and our own sincerely held beliefs, Priests for Life and I do not believe that contraception, sterilization, abortifacients, or abortion are properly understood to constitute medicine, healthcare, or a means of providing for the well-being of persons. Indeed, we believe these procedures involve gravely immoral practices.

35. Priests for Life's health care policy must be renewed by January 1, 2014, and at that time it will be subject to the contraceptive services mandate of the Affordable Care Act, which will then force Priests for Life and me through my association with Priests for Life to facilitate, support, and provide access to coverage for contraception, sterilization, and abortifacients and to further facilitate, support, and cooperate in the government's immoral objective of promoting the use of contraceptive services.

36. Consequently, as of January 1, 2014, Priests for Life will be required by the federal government to provide contraceptive, sterilization, and abortifacient coverage as part of its health care plan contrary to Priests for Life's and my sincerely held religious beliefs.

37. Priests for Life and I are morally prohibited based on our sincerely held religious convictions from cooperating, directly or indirectly, with evil. Thus, we strongly object to the federal government forcing Priests for Life to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by our religious convictions. This is true whether the immoral services are paid for directly,

indirectly, or even not at all by Priests for Life or me. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And Priests for Life and I strongly object to the government forcing us into a moral and economic dilemma with regard to Priests for Life's relationship as employer with its employees and those who associate with Priests for Life for the purpose of promoting its religious mission. Moreover, Priests for Life and I object to being forced by the government to facilitate, support, and promote the government's immoral objective of promoting the use of contraceptive services—an objective that is directly at odds with the mission and purpose of Priests for Life and with our sincerely held religious beliefs.

38. In addition, if Priests for Life were forced out of the healthcare market, many of its employees, including Dr. King and Ms. Morana, would be forced to purchase a costly, individual insurance plan as a result of the "minimum coverage" provision of the Affordable Care Act. As a result, these employees will now be forced to purchase, and thus contribute to, contraception coverage because this mandate applies to individual plans.

39. In sum, the federal government is now forcing religious employers, including Priests for Life, out of the healthcare market because of their sincerely held religious beliefs, which is both a direct harm in and of itself and an indirect harm in that it will put Priests for Life at a competitive disadvantage vis-à-vis employers offering health care plans in the employee marketplace.

40. Because of the contraceptive services mandate, including the so-called "accommodation," Priests for Life must now make business decisions that will affect its ability to continue the services it provides. As a nonprofit organization, Priests for Life funds its operations almost entirely through tax-deductible donations, including planned giving. Priests for Life must make business decisions now based on what it expects to receive in donations in the future. This requires Priests for Life to look several years ahead to determine what its budget will be and thus what services it will be capable of providing. Priests for Life's donors will not support an organization that provides its employees with access to contraception, sterilization, or abortifacients—practices that run counter to Priests for Life's mission, goals, and message—the very basis for the donations in the first instance.

41. Indeed, the current mandate with its limited religious employer exemption and so-called "accommodation" will force Priests for Life out of the market for health care services and thus adversely affect it as an organization. Many of Priests for Life's valued employees, without whom Priests for Life could not provide its much needed services, may be forced to leave Priests for Life and seek other employment that provides health care benefits.

42. The contraceptive services mandate is causing Priests for Life and me to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on our religious beliefs and practices.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 12th day of September, 2013.

/s/ Fr. Frank Pavone

Father Frank Pavone

EXHIBIT A

FDA

Birth Control Guide

This guide gives the basic facts about the different kinds of FDA-approved medicines and devices for birth control. Ask your doctor to tell you about all of the risks and benefits of using these products.

If you do not want to get pregnant, there are many birth control options to choose from. No one product is best for everyone. The only sure way to avoid pregnancy and sexually transmitted infections (STIs or STDs) is not to have any sexual contact (abstinence). This guide lists FDA-approved products for birth control. Talk to your doctor, nurse, or pharmacist about the best method for you.

There are different kinds of medicines and devices for birth control:

Barrier Methods 4

Hormonal Methods 10

Emergency Contraception 16

Implanted Devices 18

Permanent Method for Men 21

Permanent Methods for Women 22

To Learn More:

This guide should not be used in place of talking to your doctor or reading the label for your product. The product and risk information may change. To get the most recent information for your birth control go to:

Drugs

Go to http://www.accessdata.fda.gov/scripts/cder/drugsatfda (type in the name of your drug)

Devices

http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm (type in the name of your device)

Some things to think about when you choose birth control:

- Your health
- How often you have sex.
- How many sexual partners you have.
- If you want to have children in the future.
- If you will need a prescription or if you can buy the method over-the-counter.
- The number of pregnancies expected per 100 women who use a method for 1 year. For comparison, about 85 out of 100 sexually active women who do not use any birth control can expect to become pregnant in a year.
- This booklet lists pregnancy rates of **typical use**. Typical use shows how effective the different methods are during actual use (including sometimes using a method in a way that is not correct or not consistent).
- For more information on the chance of getting pregnant while using a method, please see Trussell, J. (2011). "Contraceptive failure in the United States." *Contraception* 83(5):397-404.

Tell your doctor, nurse, or pharmacist if you:

- Smoke.
- Have liver disease.
- Have blood clots.
- Have family members who have had blood clots.
- Are taking any other medicines, like antibiotics.
- Are taking any herbal products, like St. John's Wort.

To avoid pregnancy:

- No matter which method you choose, it is important to follow all of the directions carefully. If you don't, you raise your chance of getting pregnant.
- The best way to avoid pregnancy and sexually transmitted infections (STIs) is to practice total abstinence (do not have any sexual contact).

BARRIER METHODS

Block sperm from reaching the egg

Male Condom

(Latex or Polyurethane)

What is it?

- A thin film sheath placed over the erect penis.
- How do I use it?
- Put it on the erect penis right before sex.
- Pull out before the penis softens.
- Hold the condom against the base of the penis before pulling out.
- Use it only once and then throw it away

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, 18 may get pregnant.
- The most important thing is that you use a condom every time you have sex.

Some Risks

- Irritation
- Allergic reactions (If you are allergic to latex, you can try condoms made of polyurethane).

Does it protect me from sexually transmitted infections (STIs)?

- Except for abstinence, latex condoms are the best protection against HIV/AIDS and other STIs.

Female Condom

What is it?

- A lubricated, thin polyurethane pouch that is put into the vagina.

How do I use it?

- Put the female condom into the vagina right before sex.
- Use it only once and then throw it away.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 21 may get pregnant.
- The most important thing is that you use a condom every time you have sex.

Some Risks

- Irritation
- Allergic reactions

Does it protect me from sexually transmitted infections (STIs)?

- May give some protection against STIs, but more research is needed.
- Not as effective as male latex condoms.

BARRIER METHODS

Block sperm from reaching the egg

Diaphragm with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

What is it?

- A dome-shaped flexible disk with a flexible rim.
- Made from latex rubber or silicone.
- It covers the cervix.

How do I use it?

- You need to put spermicidal jelly on the inside of the diaphragm before putting it into the vagina.
- You must put the diaphragm into the vagina before having sex.
- You must leave the diaphragm in place at least 6 hours after having sex.
- It can be left in place for up to 24 hours. You need to use more spermicide every time you have sex.

How do I get it?

- You need a prescription.
- A doctor or nurse will need to do an exam to find the right size diaphragm for you.
- You should have the diaphragm checked after childbirth or if you lose more than 15 pounds. You might need a different size.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 12 may get pregnant.

Some Risks

- Irritation, allergic reactions, and urinary tract infection.
- If you keep it in place longer than 24 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No.

Sponge with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

What is it?

- A disk-shaped polyurethane device with the spermicide nonoxynol-9.

How do I use it?

- Put it into the vagina before you have sex.
- Protects for up to 24 hours. You do not need to use more spermicide each time you have sex.
- You must leave the sponge in place for at least 6 hours after having sex.

- You must take the sponge out within 30 hours after you put it in. Throw it away after you use it.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, 12 to 24 may get pregnant.
- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the sponge may not fit as well.

Some Risks

- Irritation
- Allergic reactions
- Some women may have a hard time taking the sponge out.
- If you keep it in place longer than 24-30 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

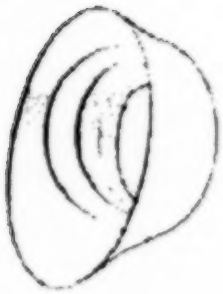
Does it protect me from sexually transmitted infections (STIs)? No.

BARRIER METHODS

Block sperm from reaching the egg

Cervical Cap with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.



What is it?

- A soft latex or silicone cup with a round rim, which fits snugly around the cervix.
- How do I use it?
- You need to put spermicidal jelly inside the cap before you use it.
- You must put the cap in the vagina before you have sex.
- You must leave the cap in place for at least 6 hours after having sex.
- You may leave the cap in for up to 48 hours.
- You do NOT need to use more spermicide each time you have sex.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 17 to 23 may get pregnant.

- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the cap may not fit as well.

Some Risks

- Irritation, allergic reactions, and abnormal Pap test.
- You may find it hard to put in.
- If you keep it in place longer than 48 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No

Spermicide Alone

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

What is it?

- A foam, cream, jelly, film, or tablet that you put into the vagina.

How do I use it?

- You need to put spermicide into the vagina 5 to 90 minutes before you have sex.

- You usually need to leave it in place at least 6 to 8 hours after sex; do not douche or rinse the vagina for at least 6 hours after sex.
- Instructions can be different for each type of spermicide. Read the label before you use it.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pre (Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 28 may get pregnant.
- Different studies show different rates of effectiveness.

Some Risks

- Irritation
- Allergic reactions
- Urinary tract infection
- If you are also using a medicine for a vaginal yeast infection, the spermicide might not work as well.

Does it protect me from sexually transmitted infections (STIs)? No.

HORMONAL METHODS

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

Oral Contraceptives (Combined Pill)
"The Pill"

What is it?

- A pill that has 2 hormones (estrogen and progestin) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps the sperm from getting to the egg.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects

- Changes in your cycle (period)

- Nausea
- Breast tenderness
- Headache

Less Common Serious Side Effects

- It is not common, but some women who take the pill develop high blood pressure.
- It is rare, but some women will have blood clots, heart attacks, or strokes.

Does it protect me from sexually transmitted infections (STIs)? No.

Oral Contraceptives (Progestin-only)

"The Mini Pill"

What is it?

- A pill that has only 1 hormone, a progestin.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- Less often, it stops the ovaries from releasing eggs.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.

- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Risks

- Irregular bleeding
- Headache
- Breast tenderness
- Nausea
- Dizziness

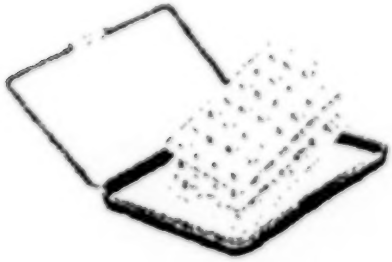
Does it protect me from sexually transmitted infections (STIs)? No.

HORMONAL METHODS

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

Oral Contraceptives (Extended/Continuous Use)

"The Pill"



What is it?

- A pill that has 2 hormones (estrogen and progestin) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.
- These pills are designed so women have fewer or no periods.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Risks

- Risks are similar to other oral contraceptives with estrogen and progestin.
- You may have more light bleeding and spotting between periods than with 21 or 24 day oral contraceptives.
- It may be harder to know if you become pregnant, since you will likely have fewer periods or no periods.

Does it protect me from sexually transmitted infections (STIs)? No.

Patch

What is it?

- This is a skin patch you can wear on the lower abdomen, buttocks, or upper arm or back.
- It has hormones (estrogen and progestin) that stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

How do I use it?

- You put on a new patch and take off the old patch once a week for 3 weeks (21 total days).
- Don't put on a patch during the fourth week. Your menstrual period should start during this patch-free week.
- If the patch comes loose or falls off, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Risks

- It will expose you to higher levels of estrogen compared to most combined oral contraceptives.
- It is not known if serious risks, such as blood clots and strokes, are greater with the patch because of the greater exposure to estrogen.

Does it protect me from sexually transmitted infections (STIs)? No.

HORMONAL METHODS

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

Vaginal Contraceptive Ring

What is it?

- It is a flexible ring that is about 2 inches around.
- It releases 2 hormones (progestin and estrogen) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

How do I use it?

- You put the ring into your vagina.
- Keep the ring in your vagina for 3 weeks and then take it out for 1 week. Your menstrual period should start during this ring-free week.
- If the ring falls out and stays out for more than 3 hours, replace it but use another method of birth control, like a condom, until the ring has been in place for 7 days in a row.
- Read the directions and talk to your doctor, nurse or pharmacist about what to do.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects and Risks

- Vaginal discharge, discomfort in the vagina, and mild irritation.
- Other risks are similar to oral contraceptives (combined pill).

Does it protect me from sexually transmitted infections (STIs)? No.

Shot/Injection

What is it?

- A shot of the hormone progestin, either in the muscle or under the skin.

How does it work?

- The shot stops the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps the sperm from getting to the egg.

How do I get it?

- You need 1 shot every 3 months from a health care provider.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, including women who don't get the shot on time, 6 may get pregnant.

Some Risks

- You may lose bone density if you get the shot for more than 2 years in a row.
- Bleeding between periods
- Headaches
- Weight gain

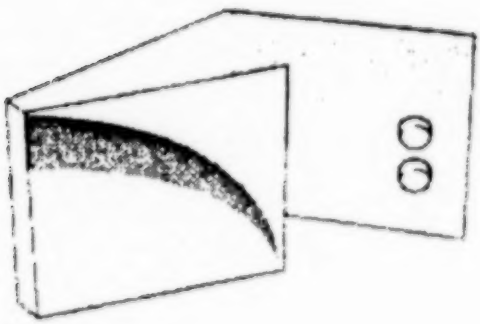
- Nervousness
- Abdominal discomfort

Does it protect me from sexually transmitted infections (STIs)? No.

EMERGENCY CONTRACEPTION

May be used if you did not use birth control or if your regular birth control fails. It should not be used as a regular form of birth control.

Plan B, Plan B One-Step and Next Choice (Levonorgestrel)



What is it?

- These are pills with the hormone progestin.
- They help prevent pregnancy after birth control failure or unprotected sex.

How does it work?

- It works mainly by stopping the release of an egg from the ovary. It may also work by preventing fertilization of an egg (the uniting of sperm with the egg) or by preventing attachment (implantation) to the womb (uterus).

- For the best chance for it to work, you should take the pill(s) as soon as possible after unprotected sex.
- You should take emergency contraception within 3 days after unprotected sex.

How do I get it?

- You can get Plan B, Plan B One-Step and Next Choice without a prescription if you are 17 years or older.
- If you are younger than 17, you need a prescription.

Chance of getting pregnant with typical use

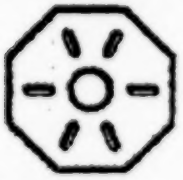
- 7 out of every 8 women who would have gotten pregnant will not become pregnant after taking Plan B, Plan B One-Step, or Next Choice.

Some Risks

- Nausea
- Vomiting
- Abdominal pain
- Fatigue
- Headache

Does it protect me from sexually transmitted infections (STIs)? No.

Ella (ulipristal acetate)



What is it?

- A pill that blocks the hormone progesterone.

- It helps prevent pregnancy after birth control failure or unprotected sex.

How does it work?

- It works mainly by stopping or delaying the ovaries from releasing an egg. It may also work by changing the lining of the womb (uterus) that may prevent attachment (implantation).
- For the best chance for it to work, you should take the pill as soon as possible after unprotected sex.
- You should take Ella within 5 days after having unprotected sex.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

- 6 or 7 out of every 10 women who would have gotten pregnant will not become pregnant after taking Ella.

Some Risks

- Headache
- Nausea
- Abdominal pain
- Menstrual pain
- Tiredness
- Dizziness

Does it protect me from sexually transmitted infections (STIs)? No.

IMPLANTED METHODS

Inserted/implanted into the body and can be kept in place for several years

Copper IUD

What is it?

- A T-shaped device that is put into the uterus by a healthcare provider.

How does it work?

- The IUD prevents sperm from reaching the egg, from fertilizing the egg, and may prevent the egg from attaching (implanting) in the womb (uterus).
- It does not stop the ovaries from making an egg each month.
- The Copper IUD can be used for up to 10 years.
- After the IUD is taken out, it is possible to get pregnant.

How do I get it?

- A doctor or other healthcare provider needs to put in the IUD.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Cramps
- Irregular bleeding

Uncommon Risks

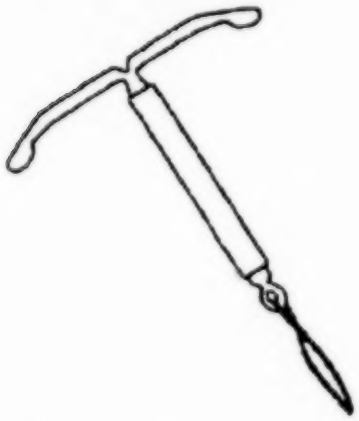
- Pelvic inflammatory disease
- Infertility

Rare Risk

- IUD is stuck in the uterus or found outside the uterus.
- Life-threatening infection

Does it protect me from sexually transmitted infections (STIs)? No.

IUD with progestin



What is it?

- A T-shaped device that is put into the uterus by a healthcare provider.

How does it work?

- It may thicken the mucus of your cervix, which makes it harder for sperm to get to the egg, and also thins the lining of your uterus.

- After a doctor or other healthcare provider puts in the IUD, it can be used for up to 5 years.
- After the IUD is taken out, it is possible to get pregnant.

How do I get it?

- A doctor or other healthcare provider needs to put in the IUD.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Irregular bleeding
- No periods
- Abdominal/pelvic pain
- Ovarian cysts

Uncommon Risks

- Pelvic inflammatory disease
- Infertility

Rare Risk

- IUD is stuck in the uterus or found outside the uterus.
- Life-threatening infection

Does it protect me from sexually transmitted infections (STIs)? No.

IMPLANTED METHODS

Inserted/implanted into the body and can be kept in place for several years

Implantable Rod

What is it?

- A thin, matchstick-sized rod that contains the hormone progestin.
- It is put under the skin on the inside of your upper arm.

How does it work?

- It stops the ovaries from releasing eggs.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- It can be used for up to 3 years.

How do I get it?

- After giving you local anesthesia, a doctor or nurse will put it under the skin of your arm with a special needle.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Changes in bleeding patterns

- Weight gain
- Breast and abdominal pain

Does it protect me from sexually transmitted infections (STIs)? No.

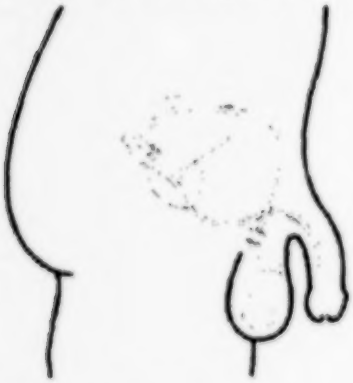
PERMANENT METHODS

For people who are sure they never want to have a child or do not want any more children.

Sterilization Surgery for Men

Vasectomy

This method is for men who are sure they never want to have a child or do not want any more children. If you are thinking about reversal, vasectomy may not be right for you. Sometimes it is possible to reverse the operation, but there are no guarantees. Reversal involves complicated surgery that might not work.



What is it?

- This is a surgery a man has only once.
- It is permanent.

How does it work?

- A surgery blocks a man's vas deferens (the tubes that carry sperm from the testes to other glands).

- Semen (the fluid that comes out of a man's penis) never has any sperm in it.
- It takes about 3 months to clear sperm out of a man's system. You need to use another form of birth control until a test shows there are no longer any sperm in the seminal fluid.

How do I get it?

- A man needs to have surgery.
- Local anesthesia is used.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women whose partner has had a vasectomy, less than 1 may get pregnant.

Some Risks

- Pain
- Bleeding
- Infection

Does it protect me from sexually transmitted infections (STIs)? No.

The success of reversal surgery depends on:

- The length of time since the vasectomy was performed.
- Whether or not antibodies to sperm have developed.
- The method used for vasectomy
- Length and location of the segments of vas deferens that were removed or blocked.

PERMANENT METHODS

For people who are sure they never want to have a child or do not want any more children.

Sterilization Surgery for Women

Surgical Implant (also called trans-abdominal surgical sterilization)

What is it?

- A device is placed on the outside of each fallopian tube.

How does it work?

- One way is by tying and cutting the tubes — this is called tubal ligation. The fallopian tubes also can be sealed using an instrument with an electrical current. They also can be closed with clips, clamps or rings. Sometimes, a small piece of the tube is removed.
- The woman's fallopian tubes are blocked so the egg and sperm can't meet in the fallopian tube. This stops you from getting pregnant.
- This is a surgery a woman has only once.
- It is permanent.

How do I get it?

- This is a surgery you ask for.

- You will need general anesthesia.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Risks

- Pain
- Bleeding
- Infection or other complications after surgery
- Ectopic (tubal) pregnancy

Does it protect me from sexually transmitted infections (STIs)? No.

Can it be reversed?

- Reversals require complicated surgery. Even though tubes can sometimes be rejoined, there are no guarantees. For many women, reversals are not possible because there is not enough of their tubes left to reconnect.

Sterilization Implant for Women

Transcervical Surgical Sterilization Implant

What is it?

- Small flexible, metal coil that is put into the fallopian tubes through the vagina.
- The device works by causing scar tissue to form around the coil. This blocks the fallopian tubes and stops you from getting pregnant.

How does it work?

- The device is put inside the fallopian tube with a special catheter.
- You need to use another birth control method during the first 3 months. You will need an X-ray to make sure the device is in the right place.
- It is permanent.

How do I get it?

- The devices are placed into the tubes using a camera placed in the uterus.
- Once the tubes are found, the devices are inserted.
- Since it is inserted through the vagina, no skin cutting (incision) is needed.
- You may need local anesthesia.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Risks

- Mild to moderate pain after insertion
- Ectopic (tubal) pregnancy

Does it protect me from sexually transmitted infections (STIs)? No.

http://www.fda.gov/birthcontrol

To Learn More:

This guide should not be used in place of talking to your doctor or reading the label for your product. The product and risk information may change. To get the most recent information for your birth control go to:

Drugs

Go to http://www.accessdata.fda.gov/scripts/cder/drugsatfda (type in the name of your drug)

Devices

http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm

(type in the name of your device)

UPDATED AUGUST 2012

TAKE TIME TO CARE ... For yourself, for those who need you.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PRIESTS FOR LIFE, *et al.*, Plaintiffs -v- DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Case No. 1:13-cv-01261-EGS **DECLARATION OF DR. ALVEDA KING**

I, Dr. Alveda King, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge.

1. I am an adult citizen of the United States and a plaintiff in this case.

2. I am a full-time employee of Priests for Life, and I am currently the Pastoral Associate and Director of African-American Outreach for Priests for Life. I am also a voice for the Silent No More Awareness Campaign, which is the world's largest mobilization of women and men who have lost children to abortion, sharing my testimony of two abortions, God's forgiveness, and healing.

3. I am covered under Priests for Life's health care plan, which, upon information and belief, is an "employer-sponsored" plan under the Patient Protection and Affordable Care Act. If Priests for Life were forced out of the health care market, I would be forced to purchase a costly, individual

insurance plan as a result of the "individual mandate" provision of the Act. This individual health care plan will necessarily include the immoral "contraceptive services" coverage because, as I understand it, the mandate applies to individual plans.

4. Through my association with Priests for Life, I engage in various expressive activities to advance and promote Priests for Life's religious mission, which includes, at its core, spreading the Gospel of Life. This activity is a religious exercise for me, as I am called by my faith to evangelize and spread the Gospel of Life.

5. The Gospel of Life, which is an expression of the Christian position and central teaching regarding the value and inviolability of human life, affirms and promotes the culture of life and actively opposes and rejects the culture of death. Contraception, sterilization, abortifacients, and abortion are all instruments of the culture of death, and their use can never be approved, endorsed, facilitated, promoted, or supported in any way

6. To advance the mission of Priests for Life and, ultimately, the mission of the Church, I often use the media of television, radio, and the printed press to promote the culture of life.

7. I am the niece of civil rights leader Martin Luther King, Jr. As someone who has witnessed firsthand and up close the civil rights movement in this country, I firmly believe that the contraceptive services mandate is an affront to civil rights. Efforts to control the population always target minority and lower-income groups. Indeed, there are racist and

eugenic roots to policies and programs that promote contraceptive services, such as the federal government's mandate at issue here.

8. I strongly object to the federal government forcing Priests for Life, the organization with which I associate and through which I tirelessly work to build the culture of life, to provide or facilitate, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients and related education and counseling based on my sincerely held religious beliefs. Further, I strongly object to the federal government forcing Priests for Life to facilitate, support, or cooperate in any way with the government's immoral objective of promoting the use of contraceptive services—an objective that is squarely at odds with my religious beliefs and which directly undermines the very work that I do.

9. As the Pastoral Associate and Director of African-American Outreach for Priests for Life, I, along with my associates, including Father Pavone and Janet Morana, travel the country full time to meet with priests, pro-life groups, and others to express, teach, and spread the Gospel of Life.

10. As a Christian organization, Priests for Life has a moral and religious obligation to resist and oppose actions designed to advance and promote the use of contraceptive services. As such, Priests for Life cannot submit to any requirements imposed by the federal government that will promote the use of contraceptive services, including any requirement to provide a "self-certification" to its insurer that will then trigger the insurer's obligation to make

"separate payments for contraceptive services directly for plan participants and beneficiaries" of Priests for Life's health care plan.

11. Pursuant to its moral and religious obligations, Priests for Life cannot provide any notice or information to its insurer, its employees, or to the beneficiaries of its health care plan that is designed to promote or facilitate the use of contraceptive services.

12. Consequently, upon information and belief, by refusing to cooperate with, and thus facilitate, the government's immoral contraceptive services scheme and objective and by further refusing to provide coverage in its health care plan for immoral contraceptive services and related education and counseling required by the mandate, all based on its sincerely held religious beliefs, Priests for Life will be subject to crippling fines of $100 per day per employee. This will no doubt adversely affect the viability of Priests for Life as an organization, and thereby adversely affect me as a Pastoral Associate and Director, as an employee, and as an advocate for the culture of life.

13. I hold and actively profess religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. In particular, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, I believe that human sexuality has two primary purposes: to "most closely unit[e] husband and wife" and "for the generation of new lives." I believe and actively profess the Christian teaching that "[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to

contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will." Therefore, I believe and teach that "any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means"—including contraception and sterilization—is a grave sin.

14. I Believe, as Pope Paul VI prophetically stated in *Humanae Vitae*, that "man, growing used to the employment of anticonceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion." Consequently, I believe and profess that the contraceptive services mandate harms women physically, emotionally, morally, and spiritually. Indeed, my personal experiences attest to the harm that the contraceptive services mandate will have on women.

15. When the chemical birth control given to me by Planned Parenthood gave me a blood clotting disorder called phlebitis, I was not immediately taken off the pill. Instead, they experimented with various dosages. I was also given a diaphragm and free condoms in an effort to prevent subsequent pregnancies. And I was given an IUD, which caused cervical damage. All the birth control failed me. The pills made me sick. The alternatives did not work. I got pregnant anyway and ended up having two abortions as a result. I also had a miscarriage related to the harmful impact of my prior abortions

and the chemical and invasive birth control methods I had used. I had to have cervical surgery, and the lingering impact of phlebitis remained through the years to remind me of the harmful impact of artificial contraception, such as those contraceptive services mandated by the federal government pursuant to the Affordable Care Act. I have since had a conversion of faith.

16. Pursuant to my Christian faith, I hold and actively profess religious beliefs that include traditional Christian teaching on the sanctity of life. I believe and teach that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, I believe and teach that abortion, which includes abortifacients, ends a human life and is a grave sin.

17 Further, I subscribe to the Christian teaching about the proper nature and aims of healthcare and medical treatment. For example, I believe, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "'[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

18. Based on my sincerely held Christian beliefs, I do not believe that contraception, sterilization, abortifacients, or abortion are properly understood to constitute medicine, healthcare, or a means of providing for the well-being of persons. Indeed, I believe these procedures involve gravely immoral practices.

19. Based on my sincerely held religious convictions, I am morally prohibited from cooperating, directly or indirectly, with evil. Thus, I strongly object to the federal government forcing Priests for Life to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by my religious convictions. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Priests for Life or me. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And I strongly object to the government forcing me into a moral and economic dilemma with regard to my relationship with Priests for Life. Moreover, I strongly object to being forced by the government to facilitate, support, and promote the government's immoral objective of promoting the use of contraceptive services—an objective that is directly at odds with the mission and purpose of Priests for Life and with my sincerely held religious beliefs.

20. As a result of the contraceptive services mandate, the federal government is forcing Priests for Life out of the healthcare market because of its sincerely held religious beliefs, which is both a direct harm in and of itself and an indirect harm in that it will put Priests for Life at a competitive disadvantage vis-à-vis employers offering health care plans in the employee marketplace.

21. The current mandate with its limited religious employer exemption and so-called "accommodation" will force Priests for Life to either leave the market for health care services or pay crippling fines, either of which will adversely affect it as an organization,

and thus adversely affect me both spiritually—in that it will harm my ability to spread the Gospel of Life—and financially. Many of Priests for Life's valued employees, without whom Priests for Life could not provide its much needed services, may be forced to leave Priests for Life and seek other employment that provides health care benefits. Indeed, the contraceptive services mandate threatens the very survival of Priests for Life as an effective, pro-life organization.

22. In sum, the contraceptive services mandate is causing Priests for Life and me to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on our religious beliefs and practices.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 13th day of September, 2013.

/s/ Alevda King

Alveda King

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PRIESTS FOR LIFE, *et al.*, Plaintiffs -v- DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Case No. 1:13-cv-01261-EGS **DECLARATION OF JANET MORANA**

I, Janet Morana, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge.

1. I am an adult citizen of the United States and a plaintiff in this case.

2. I am a full-time employee of Priests for Life, and I am currently the Executive Director. I am also the Co-Founder of the Silent No More Awareness Campaign, which is the world's largest mobilization of women and men who have lost children to abortion.

3. I am covered under Priests for Life's health care plan, which, upon information and belief, is an "employer-sponsored" plan under the Patient Protection and Affordable Care Act. If Priests for Life were forced out of the health care market, I would be forced to purchase a costly, individual insurance plan as a result of the "individual mandate" provision of the Act. This individual health

care plan will necessarily include the immoral "contraceptive services" coverage because, as I understand it, the mandate applies to individual plans.

4. Through my association with Priests for Life, I engage in various expressive activities to advance and promote Priests for Life's religious mission, which includes, at its core, spreading the Gospel of Life. This activity is a religious exercise for me, as I am called by my faith to evangelize and spread the Gospel of Life.

5. The Gospel of Life, which is an expression of the Catholic Church's position and central teaching regarding the value and inviolability of human life, affirms and promotes the culture of life and actively opposes and rejects the culture of death. Contraception, sterilization, abortifacients, and abortion are all instruments of the culture of death, and their use can never be approved, endorsed, facilitated, promoted, or supported in any way.

6. To advance the mission of Priests for Life and, ultimately, the mission of the Church, I often use the media of television, radio, and the printed press to promote the culture of life. For example, I am often featured on Father Frank Pavone's *Defending Life* television series on the Eternal Word Television Network (EWTN), and I am the co-host of *The Catholic View for Women*, also seen on EWTN. I am also a weekly guest on EWTN Global Catholic Radio with Teresa Tomeo and numerous other media outlets. Indeed, my life is dedicated to spreading the Gospel of Life and thus building a culture of life.

7. Consequently, I strongly object to the federal government forcing Priests for Life, the organization with which I associate and through which I tirelessly work to build the culture of life, to provide or facilitate, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients and related education and counseling based on my sincerely held religious beliefs. Further, I strongly object to the federal government forcing Priests for Life to facilitate, support, or cooperate in any way with the government's immoral objective of promoting the use of contraceptive services—an objective that is squarely at odds with my religious beliefs and which directly undermines the very work that I do.

8. As the Executive Director of Priests for Life, I, along with my associates, including Father Pavone and Dr. Alveda King, travel the country full time to meet with priests, pro-life groups, and others to express, teach, and spread the Gospel of Life.

9. As a Catholic organization, Priests for Life has a moral and religious obligation to resist and oppose actions designed to advance and promote the use of contraceptive services. As such, Priests for Life cannot submit to any requirements imposed by the federal government that will promote the use of contraceptive services, including any requirement to provide a "self-certification" to its insurer that will then trigger the insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries" of Priests for Life's health care plan.

10. Pursuant to its moral and religious obligations, Priests for Life cannot provide any notice or information to its insurer, its employees, or to the beneficiaries of its health care plan that is designed to promote or facilitate the use of contraceptive services.

11. Consequently, upon information and belief, by refusing to cooperate with, and thus facilitate, the government's immoral contraceptive services scheme and objective and by further refusing to provide coverage in its health care plan for immoral contraceptive services and related education and counseling required by the mandate, all based on its sincerely held religious beliefs, Priests for Life will be subject to crippling fines of $100 per day per employee. This will no doubt adversely affect the viability of Priests for Life as an organization, and thereby adversely affect me as the Executive Director, as an employee, and as an advocate for the culture of life.

12. I hold and actively profess religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. In particular, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, I believe that human sexuality has two primary purposes: to "most closely unit[e] husband and wife" and "for the generation of new lives." I believe and actively profess the Catholic Church teaching that "[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will." Therefore, I believe and teach that

"any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means"—including contraception and sterilization—is a grave sin.

13. I believe, as Pope Paul VI prophetically stated in *Humanae Vitae*, that "man, growing used to the employment of anticonceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion." Consequently, I believe and profess that the contraceptive services mandate harms women physically, emotionally, morally, and spiritually. Indeed, my personal experiences attest to the harm that the contraceptive services mandate will have on women.

14. I was first given birth control pills by a gynecologist when I was in high school (1966-68). Although I was not sexually active, I stayed on the pills for about two years, then on the advice of a doctor stopped taking them. I again took birth control pills when I was engaged for about three years (1974-1977). I stopped the pills again to have children. In 1980, I went back on birth control pills for about three years, but then on the advice of my physician I stopped. He told me that because of a history of strokes in my family, it was not advisable for me to stay on birth control pills as they could cause me serious physical harm. I would never have taken the pills had I been advised of the risk.

15. In 1989, when I returned to practicing my Catholic faith, I learned of the abortifacient qualities of birth control pills, which caused me great distress. The thought that I could have been aborting new life was psychologically damaging to me. Feelings of guilt set in. I later also found out that the birth control pill was classified as a group 1 carcinogen by the World Health Organization in 1995 and later reaffirmed as such in 2006.

16. Because of the negative impact taking these pills had on my life, I sought counseling. I attended a Rachel's Vineyard retreat and Hope Alive Counseling to help me deal with my anxiety and grief.

17 Pursuant to my Catholic faith, I hold and actively profess religious beliefs that include traditional Christian teaching on the sanctity of life. I believe and teach that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, I believe and teach that abortion, which includes abortifacients, ends a human life and is a grave sin.

18. Further, I subscribe to authoritative Catholic teaching about the proper nature and aims of healthcare and medical treatment. For example, I believe, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "'[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

19. Based on the teaching of the Catholic Church, and my own sincerely held beliefs, I do not believe

that contraception, sterilization, abortifacients, or abortion are properly understood to constitute medicine, healthcare, or a means of providing for the well-being of persons. Indeed, I believe these procedures involve gravely immoral practices.

20. Based on my sincerely held religious convictions, I am morally prohibited from cooperating, directly or indirectly, with evil. Thus, I strongly object to the federal government forcing Priests for Life to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by my religious convictions. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Priests for Life or me. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And I strongly object to the government forcing me into a moral and economic dilemma with regard to my relationship with Priests for Life. Moreover, I strongly object to being forced by the government to facilitate, support, and promote the government's immoral objective of promoting the use of contraceptive services—an objective that is directly at odds with the mission and purpose of Priests for Life and with my sincerely held religious beliefs.

21. As a result of the contraceptive services mandate, the federal government is forcing Priests for Life out of the healthcare market because of its sincerely held religious beliefs, which is both a direct harm in and of itself and an indirect harm in that it will put Priests for Life at a competitive disadvantage vis-à-vis employers offering health care plans in the employee marketplace.

22. The current mandate with its limited religious employer exemption and so-called "accommodation" will force Priests for Life to either leave the market for health care services or pay crippling fines, either of which will adversely affect it as an organization, and thus adversely affect me both spiritually-in that it will harm my ability to spread the Gospel of Life—and financially. Many of Priests for Life's valued employees, without whom Priests for Life could not provide its much needed services, may be forced to leave Priests for Life and seek other employment that provides health care benefits. Indeed, the contraceptive services mandate threatens the very survival of Priests for Life as an effective, pro-life organization.

23. In sum, the contraceptive services mandate is causing Priests for Life and me to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on our religious beliefs and practices.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 13th day of September, 2013.

/s/ Janet Morana
Janet Morana

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PRIESTS FOR LIFE, *et al.*, Plaintiffs, -v- DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Case No. 1:13-cv-01261-EGS **DECLARATION OF ROBERT J. MUISE**

I, Robert J. Muise, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge and/or verifiable information and belief.

1. I am an adult citizen of the United States and co-lead counsel for Plaintiffs in the above-captioned case.

2. Attached to this declaration as Exhibit A is a true and correct copy of the Institute of Medicine's ("IOM") report published in 2011 regarding preventive care for women. The report is entitled, "Clinical Preventive Services for Women: Closing the Gaps," and it can be found at http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx. This website was last visited on September 29, 2013.

3. Attached to this declaration as Exhibit B is a true and correct copy of the "Women's Preventive Services: Required Health Plan Coverage Guidelines" (hereinafter "Guidelines"). These Guidelines can be

found at http://www.hrsa.gov/womensguidelines/ This website was last visited on September 29, 2013.

4. Attached to this declaration as Exhibit C is a true and correct copy of the Department of Health and Human Services' "Guidance on the Temporary Enforcement Safe Harbor" issued on August 15, 2012.

5. Attached to this declaration as Exhibit D is a true and correct copy of the press release issued on June 28, 2013, in which the Obama administration announced that it had issued final rules on contraceptive coverage and religious organizations. This press release can be found at http://www.hhs.gov/news/press/2013pres/06/20130628a.html. This website was last visited on September 29, 2013.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of September, 2013.

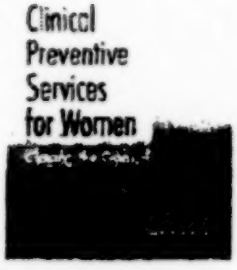
/s/ Robert J. Muise

Robert J. Muise, Esq.

EXHIBIT A

INSTITUTE OF MEDICINE
OF THE NATIONAL ACADEMIES
Advising the nation • Improving health

Clinical Preventive Services for Women
Closing the Gaps



As a centerpiece of the *Patient Protection and Affordable Care Act* (ACA) of 2010, the focus on preventive services is a profound shift from a reactive system that primarily responds to acute problems and urgent needs to one that helps foster optimal health and well-being. Women stand to benefit from this shift given their longer life expectancies, reproductive and gender-specific conditions, and historically greater burden of chronic disease and disability. And, for the same reasons, they will benefit economically since the ACA removes cost-sharing requirements for specified preventive services—eliminating out-of-pocket costs that often put screenings, coun-

Women stand to benefit from this shift given their longer life expectancies, reproductive and gender-specific conditions, and historically greater burden of chronic disease and disability.

seling and procedures supporting health out of reach for moderate- and lower-income women.

Given the magnitude of change, the U.S. Department of Health and Human Services (HHS) charged the Institute of Medicine (IOM) with reviewing what preventive services are important to women's health and well-being and then recommending which of these should be considered in the development of comprehensive guidelines. The IOM convened a committee of experts to identify critical gaps in the preventive services already identified in the ACA, which are based on recommendations developed by three independent bodies: the United States Preventive Services Task Force, the American Academy of Pediatrics' Bright Futures recommendations for adolescents, and the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices.

The committee defined preventive health services as measures—including medications, procedures, devices, tests, education, and counseling—shown to improve well-being and/or decrease the likelihood or delay the onset of a targeted disease or condition. To guide its deliberations in determining gaps in preventive services not included in existing guidelines, the committee developed four overarching questions:

- Are high-quality systematic evidence reviews available which indicate that the service is effective in women?

- Are quality peer-reviewed studies available that demonstrate effectiveness of the service in women?
- Has the measure been identified as a federal priority to address in women's preventive services?
- Are there existing federal, state, or international practices, professional guidelines, or federal reimbursement policies that support the use of the measure?

Preventive measures recommended by the IOM committee for preventive coverage consideration met the following criteria:

- The condition to be prevented affects a broad population;
- The condition to be prevented has a large potential impact on health and well-being; and
- The quality and strength of the evidence is supportive.

The committee took seriously its task of focusing on women's unique health needs. Throughout the study process, the committee repeatedly questioned whether the disease or condition was significant to women and, especially, whether it was more common or more serious in women than in men or whether women experienced different outcomes or benefited from different interventions than men.

Protecting Women's Health

The committee found sufficient evidence to endorse eight recommendations for specific preventive services and screenings that support women's overall health.

For sexually active women, the committee found that current recommendations of screening for cervical cancer, counseling for sexually transmitted infections, and HIV counseling and screening are too limited in scope and should be expanded. It also made several recommendations that support women's reproductive health. These include a fuller range of contraceptive education, counseling, methods, and services so that women can better avoid unwanted pregnancies and space their pregnancies to promote optimal birth outcomes. Additional recommendations address needs of pregnant women, including screening for gestational diabetes and lactation counseling and equipment to help women who choose to breastfeed to do so successfully.

The committee recommended including at least one well-woman preventive care visit annually for women to receive comprehensive services. Depending on a woman's health status, health needs, and risk factors, multiple visits might be recommended to provide the full range of preventive services.

Finally, the committee recommended that all women and adolescent girls be screened and counseled for interpersonal and domestic violence in a culturally sensitive and supportive manner. An estimated five million women are physically, sexually, or emotionally abused by their partners each year in the United States. Screening for risk of abuse is central to women's safety, as well as to addressing current health concerns and preventing future health problems.

Keeping Preventive Care Up-to-Date

The committee made several recommendations that will enable HHS to periodically update the review of preventive services covered under the ACA. The committee recommends developing the structures within HHS that involve accountability and processes to ensure that preventive services meeting the requisite criteria will be considered in the future, as science emerges. Further, HHS should establish an independent commission to support the process.

The committee noted that the public health system and community-based preventive services are important to achieving the aims of preventive health services. Community-based health services can play significant roles in providing preventive care to many different populations. The committee encourages HHS to consider widening the proposed commission's scope of authority so that public health efforts work in coordination with the new and existing bodies that are charged with overseeing other elements of the ACA.

Conclusion

Positioning preventive care as the foundation of the U.S. healthcare system is critical to ensuring Americans' health and well-being. Although the ACA addresses preventive services for both men and women of all ages, women particularly stand to benefit from additional preventive health services. The inclusion of evidence-based screenings, counseling, and procedures that address women's greater need for services over the course of a lifetime

may have a profound impact for individuals and the nation as a whole.

The committee defined preventive health services as measures–including medications, procedures, devices, texts, education, and counseling–shown to improve well-being and/or to improve well-being and/or decrease the likelihood or delay the onset of a targeted disease or condition.

Recommendation for Preventive Health Care Services for Women that Should be Considered by the U.S. Department of Health and Human Services

Recommendation 5.1: Screening for gestational diabetes in pregnant women between 24 and 28 weeks of gestation and at the first prenatal visit for pregnant women identified to be at high risk for diabetes.
Recommendation 5.2: The addition of high-risk human papillomavirus DNA testing in addition to cytology testing in women with normal cytology results. Screening should begin at 30 years of age and should occur no more frequently than every 3 years.
Recommendation 5.3: Annual counseling on sexually transmitted infections for sexually active women.
Recommendation 5.4: Counseling and screening for human immunodeficiency virus infection on an annual basis for sexually active women.
Recommendation 5.5: The full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.
Recommendation 5.6: Comprehensive lactation support and counseling and costs of renting breastfeeding equipment. A trained provider should provide counseling services to all pregnant women and to those in the postpartum period to ensure the successful initiation and duration of breastfeeding. (The ACA ensures that breastfeeding counseling is covered; however, the committee recognizes that interpretation of this varies.)

Recommendation 5.7: Screening and counseling for interpersonal and domestic violence. Screening and counseling involve elicitation of information from women and adolescents about current and past violence and abuse in a culturally sensitive and supportive manner to address current health concerns about safety and other current or future health problems.

Recommendation 5.8: At least one well-woman preventive care visit annually for adult women to obtain the recommended preventive services, including preconception and prenatal care. The committee also recognizes that several visits may be needed to obtain all necessary recommended preventive services, depending on a woman's health status, health needs, and other risk factors.

Committee on Preventive Services for Women

Linda Rosenstock (Chair)
Dean, School of Public Health, University of California, Los Angeles

Alfred O. Berg
Professor, Department of Family Medicine, University of Washington School of Medicine, Seattle

Claire D. Brindis
Professor of Pediatrics and Health Policy, Department of Pediatrics and Department of Obstetrics, Gynecology and Reproductive Health Services, and Director, Philip R. Lee Institute for Health Policy Studies, School of Medicine, University of California, San Francisco

Angela Diaz
Jean C. and James W. Crystal Professor of Adolescent Health, Department of Pediatrics and Community Preventative Medicine, Mount Sinai Medical Center, New York

Francisco Garcia
Distinguished Outreach Professor of Public Health, and Obstetrics and Gynecology; Director, University of Arizona Center of Excellence in Women's Health; and Codirector of

the Cancer Disparities Institute, University of Arizona, Tucson

Kimberly Gregory
Vice Chair of Women's Healthcare Quality and Performance Improvement, and Department of Obstetrics and Gynecology, Cedars-Sinai Medical Center, Los Angeles

Paula A. Johnson
Executive Director, Connors Center for Women's Health and Gender Biology, and Chief, Division of Women's Health, Brigham and Women's Hospital, Boston

Anthony Lo Sasso
Professor and Senior Research Scientist, Division of Health Policy and Administration, University of Illinois at Chicago School of Public Health

Jeanette H. Magnus
Cecile Usdin Professor in Women's Health and Chair, Department of Community Health Sciences, School of Public Health and Tropical Medicine, Tulane University, New Orleans

Heidi D. Nelson
Research Professor of Medical Informatics and Clinical Epidemiology and Medicine, Oregon Health and Science University, and Medical Director for Cancer Prevention and Screening, Providence Cancer Center, Providence Health & Services, Portland

Roberta B. Ness
Dean and M. David Low Chair in Public Health, School of Public Health, University of Texas, Houston

Magda G. Peck
Professor of Public Health and Pediatrics and Associate Dean for Community Engagement and Public Health Practice, College of Public Health, University of Nebraska Medical Centers, Omaha

E. Albert Reece
Vice President for Medical Affairs, University of Maryland, and John Z. and Akiko K. Bowers Distinguished Professor

and Dean, University of Maryland School of Medicine, Baltimore

Alina Salganicoff
Vice President and Director, Women's Health Policy, Henry J. Kaiser Family Foundation, Menlo Park, California

Sally W. Vernon
Division Director, Health Promotion and Behavioral Sciences, Blair Justice, Ph.D. Professorship in Mind-Body Medicine and Public Health, and Professor of Epidemiology and Behavioral Sciences, University of Texas School of Public Health, Houston

Carol S. Weisman
Distinguished Professor of Public Health Sciences and Obstetrics and Gynecology and Associate Dean for Faculty Affairs, Pennsylvania State College of Medicine, Hershey

Study Staff

Karen Helsing
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Associate Program Officer

Suzanne Landi
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Rebekah E. Gee
Institute of Medicine Anniversary Fellow

Amy Pryzbocki
Financial Associate

Rose Marie Martinez
Director, Board on Population Health and Public Health Practice

Study Sponsor

The Department of Health and Human Services

EXHIBIT B

Health Resources and Services Administration

Women's Preventive Services Guidelines

Affordable Care Act Expands Prevention Coverage for Women's Health and Well-Being

The Affordable Care Act—the health insurance reform legislation passed by Congress and signed into law by President Obama on March 23, 2010—helps make prevention affordable and accessible for all Americans by requiring health plans to cover preventive services and by eliminating cost sharing for those services. Preventive services that have strong scientific evidence of their health benefits must be covered and plans can no longer charge a patient a copayment, coinsurance or deductible for these services when they are delivered by a network provider.

Women's Preventive Services Guidelines Supported by the Health Resources and Services Administration

Under the Affordable Care Act, women's preventive health care—such as mammograms, screenings for cervical cancer, prenatal care, and other services—generally must be covered by health plans with no cost sharing. However, the law recognizes and HHS

understands the need to take into account the unique health needs of women throughout their lifespan.

The HRSA-supported health plan coverage guidelines, developed by the Institute of Medicine (IOM), will help ensure that women receive a comprehensive set of preventive services without having to pay a co-payment, co-insurance or a deductible. HHS commissioned an IOM study to review what preventive services are necessary for women's health and well-being and therefore should be considered in the development of comprehensive guidelines for preventive services for women. HRSA is supporting the IOM's recommendations on preventive services that address health needs specific to women and fill gaps in existing guidelines.

Health Resources and Services Administration Women's Preventive Services Guidelines

Non-grandfathered plans (plans or policies created or sold after March 23, 2010, or older plans or policies that have been changed in certain ways since that date) generally are required to provide coverage without cost sharing consistent with these guidelines in the first plan year (in the individual market, policy year) that begins on or after August 1, 2012.

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Well-woman visits.	Well-woman preventive care visit annually for adult women to obtain the	Annual, although HHS recognizes that several visits may be needed to obtain all

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
	recommended preventive services that are age and developmentally appropriate, including preconception care and many services necessary for prenatal care. This well-woman visit should, where appropriate, include other preventive services listed in this set of guidelines, as well as others referenced in section 2713.	necessary recommended preventive services, depending on a woman's health status, health needs, and other risk factors.* (see note)
Screening for gestational diabetes.	Screening for gestational diabetes.	In pregnant women between 24 and 28 weeks of gestation and at the first prenatal visit for pregnant women identified to be at high risk for diabetes.
Human papillomavirus testing.	High-risk human papillomavirus DNA testing in women with normal cytology results.	Screening should begin at 30 years of age and should occur no more frequently than every 3 years.

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Counseling for sexually transmitted infections.	Counseling on sexually transmitted infections for all sexually active women.	Annual.
Counseling and screening for human immune-deficiency virus.	Counseling and screening for human immune-deficiency virus infection for all sexually active women.	Annual.
Contraceptive methods and counseling.** (see note)	All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.	As prescribed.
Breastfeeding support, supplies, and counseling.	Comprehensive lactation support and counseling, by a trained provider during pregnancy and/or in the postpartum period, and costs for renting breastfeeding	In conjunction with each birth.

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
	equipment.	
Screening and counseling for interpersonal and domestic violence.	Screening and counseling for interpersonal and domestic violence.	

* Refer to guidance issued by the Center for Consumer Information and Insurance Oversight entitled *Affordable Care Act Implementation FAQs, Set 12, Q10.* In addition, refer to recommendations in the July 2011 IOM report entitled Clinical Preventive Services for Women: Closing the Gaps concerning distinct preventive services that may be obtained during a well-woman preventive services visit.

** The guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers. Effective August 1, 2013, a religious employer is defined as an employer that is organized and operates as a non-profit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. HRSA notes that, as of August 1, 2013, group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the requirement to cover contraceptive services under section 2713 of the Public Health Service Act, as incorporated into the Employee

Retirement Income Security Act and the Internal Revenue Code. HRSA also notes that, as of January 1, 2014, accommodations are available to group health plans established or maintained by certain eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations, with respect to the contraceptive coverage requirement. See Federal Register Notice: *Coverage of Certain Preventive Services Under the Affordable Care Act* (PDF 327 KB)

EXHIBIT C

DEPARTMENT OF HEALTH & HUMAN SERVICES Washington, DC 20201

Date: August 15, 2012[1]

From: Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare & Medicaid Services (CMS)

Title: Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code

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[1] This bulletin was originally issued on February 10, 2012, to describe the temporary enforcement safe harbor. In reissuing this bulletin, CMS is not changing the February 10 policy; it is only clarifying three points: (1) that the safe harbor is also available to non-profit organizations with religious objections to some but not all contraceptive coverage, as clarified herein; (2) that group health plans that took some action to try to exclude or limit contraceptive coverage that was not successful as of February 10, 2012, are not for that reason precluded from eligibility for the safe harbor, as clarified herein; and (3) that the safe harbor may be invoked without prejudice by non-profit organizations that are uncertain whether they qualify for the religious employer exemption, as clarified herein. Organizations that have already completed the certification or issued the notice from the February 10, 2012 bulletin are not required by this revised bulletin to recertify or reissue the notice.

I. Purpose

Section 2713(a)(4) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires non-grandfathered group health plans and health insurance issuers to provide coverage for recommended women's preventive health services without cost sharing. The Affordable Care Act also added section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act (including section 2713) into ERISA and the Code to make them applicable to group health plans.

Interim final regulations were issued by the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury (collectively, the Departments) on July 19, 2010 (codified at 26 CFR §54.9815-2713T; 29 CFR §2590.715-2713; and 45 CFR §147.130), which provide that a non-grandfathered group health plan or health insurance issuer must cover certain items and services, without cost sharing, as recommended by the U.S. Preventive Services Task Force (USPSTF), the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the Health Resources and Services Administration (HRSA). Among other things, the interim final regulations provide that, if a new recommendation or guideline is issued, a plan or issuer must provide coverage consistent with the new recommendation or guideline (with no cost sharing) for plan years (or, in the individual market, policy years) that begin on or after the date that is one year

after the date on which the new recommendation or guideline is issued. HRSA was charged by statute with developing comprehensive guidelines for preventive care and screenings with respect to women, to the extent not already recommended by USPSTF. On August 1, 2011, HRSA adopted and released guidelines for women's preventive services based on recommendations developed by the Institute of Medicine at the request of HHS (Women's Preventive Services: Required Health Plan Coverage Guidelines, or HRSA Guidelines). One of HRSA's recommendations is that all Food and Drug Administration-approved contraceptives for women, as prescribed by a provider, be covered by non-grandfathered group health plans and health insurance issuers without cost sharing.

That same day, the Departments issued an amendment to the interim final regulations that provided HRSA discretion to exempt group health plans established or maintained by certain religious employers (and any group health insurance provided in connection with such plans) from any requirement to cover contraceptive services. The Departments' amended interim final regulations specified that, for purposes of this exemption, a religious employer is one that: (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to

the exclusively religious activities of any religious order. The definition of religious employer, as set forth in the amended interim final regulations, was based on existing definitions used by some States that exempt group health insurance coverage of certain religious employers from having to comply with State insurance law requirements to cover contraceptive services. This discretion to exempt the group health plans established or maintained by these religious employers (and any group health insurance coverage provided in connection with such plans) from any requirement to cover contraceptive services was exercised by HRSA in the HRSA Guidelines, consistent with the Departments' amended interim final regulations. Therefore, this exemption now applies to any group health plan established or maintained by a qualifying religious employer (and any group health insurance coverage provided in connection with such a plan).

For all non-exempted, non-grandfathered plans and policies, the regulations require coverage of the recommended women's preventive services, including the recommended contraceptive services, without cost sharing, for plan years (or, in the individual market, policy years) beginning on or after August 1, 2012.

On January 20, 2012, Secretary Sebelius reaffirmed the exemption authorized in the amended interim final regulations. In doing so, the Secretary indicated that a temporary enforcement safe harbor would be provided to non-exempted, non-grandfathered group health plans established and maintained by non-profit organizations with religious objections to contraceptive coverage (and any health insurance coverage offered in connection with such plans). This

bulletin describes the temporary enforcement safe harbor. It is available to non-exempted, non-grandfathered group health plans established or maintained by non-profit organizations whose plans have consistently not covered all or the same subset of contraceptive services for religious reasons at any point from the original issuance date of this bulletin (i.e., February 10, 2012) onward, consistent with any applicable State law (and any group health insurance coverage provided in connection with such plans), as described herein. This temporary enforcement safe harbor provides an additional year for these group health plans and group health insurance issuers (i.e., until the first plan year beginning on or after August 1, 2013).

The Department of Labor and the Department of the Treasury agree with the need for such transitional relief and will not take any enforcement action against an employer or group health plan that complies with the conditions of the temporary enforcement safe harbor described herein.

II. Temporary Enforcement Safe Harbor

The temporary enforcement safe harbor will be in effect until the first plan year that begins on or after August 1, 2013. Neither employers, nor group health plans, nor group health insurance issuers will be subject to any enforcement action by the Departments for failing to cover some or all of the recommended contraceptive services without cost sharing in non-exempted, non-grandfathered group health plans established or maintained by an organization, including a group or association of employers within the meaning of section 3(5) of

ERISA, (and any group health insurance coverage provided in connection with such plans) meeting all of the following criteria:

1. The organization is organized and operates as a non-profit entity.

2. From February 10, 2012 onward, the group health plan established or maintained by the organization has consistently not provided all or the same subset of the contraceptive coverage otherwise required at any point, consistent with any applicable State law, because of the religious beliefs of the organization.

3. As detailed below, the group health plan established or maintained by the organization (or another entity on behalf of the plan, such as a health insurance issuer or third-party administrator) must provide to participants the attached notice, as described below, which states that some or all contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.[2]

4. The organization self-certifies that it satisfies criteria 1—3 above, and documents its self-certification in accordance with the procedures detailed herein.

With respect to the second criterion above, the following exception applies. A group health plan will be considered not to have provided all or the same subset of the contraceptive coverage otherwise

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[2] Nothing in this bulletin precludes employers or others from expressing their opposition, if any, to the final regulations or to the use of contraceptives.

required if it took some action to try to exclude or limit such coverage that was not successful as of February 10, 2012. Accordingly, such coverage will not disqualify an employer, a group health plan, or a group health insurance issuer from eligibility for the safe harbor. To qualify, the organization must certify that it (or its plan or its issuer) took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action. Section IV describes the specifications for the certification.

Any employer that potentially qualifies for the religious employer exemption may, if eligible, opt to invoke the temporary enforcement safe harbor. Doing so would not preclude the employer from later invoking the exemption, if eligible.

III. Notice

The attached notice must be in any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of the first plan year that is on or after August 1, 2012.[3] (For example, for a calendar year plan with an open enrollment period beginning November 1, the notice must be in any

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[3] CMS has determined that the notice is not a collection of information under the Paperwork Reduction Act because it is "[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public." 5 CFR §1320.3(c)(2).

application materials provided to participants on or after November 1, 2012.).

This notice is required to be provided by the group health plan (although the plan may ask another entity, such as a health insurance issuer or third-party administrator, to accept responsibility for providing the notice on its behalf). With respect to insured coverage, unless it accepts in writing the responsibility for providing the notice, a group health insurance issuer does not lose its protection under the temporary enforcement safe harbor solely because the notice is not distributed by the plan as described herein, or because the issuer relies in good faith on a representation by the plan that turns out to be incorrect.

Organizations that exclude some contraceptive coverage must use the term "some" in the notice where indicated.

IV Certification

A certification must be made by the organization described in section II.[4] The certification must be signed by an organizational representative who is authorized to make the certification on behalf of the organization. The specifications for the certification are attached.

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[4] CMS has determined that the certification is not a collection of information under the Paperwork Reduction Act because, although it is a third-party disclosure, it is a certification that does not entail burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument. 5 CFR §1320.3(h)(1).

The certification must be completed and made available for examination by the first day of the plan year to which the temporary enforcement safe harbor applies.

Where to get more information:

If you have any questions regarding this bulletin, contact CCIIO at CMS at 410-786-1565 or at phig@cms.hhs.gov.

NOTICE TO PLAN PARTICIPANTS

The organization that sponsors your group health plan has certified that it qualifies for a temporary enforcement safe harbor with respect to the Federal requirement to cover contraceptive services without cost sharing. During this one-year period, coverage under your group health plan will not include coverage of [some] contraceptive services.

DEPARTMENT OF HEALTH & HUMAN SERVICES Washington, DC 20201

CERTIFICATION

This form is to be used to certify that the group health plan established or maintained by the organization listed below qualifies for the temporary enforcement safe harbor, as described in HHS bulletin entitled "Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code," pertaining to coverage of FDA-approved contraceptive services for women without cost sharing.

Please fill out this form completely.

	Name of the organization sponsoring the plan
	Name of the individual who is authorized to make, and makes, this certification on behalf of the organization
	Mailing and email addresses and phone number for

	the individual listed above

(Check the applicable box)

___ I certify that the organization is organized and operated as a non-profit entity; and that, at any point from February 10, 2012 onward, the plan has consistently not provided all or the same subset of the contraceptive coverage otherwise required, consistent with any applicable State law, because of the religious beliefs of the organization.

__ I certify that the organization (or its plan or its issuer) took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action, and that, but for that coverage, I could make the certification above.

I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.

_____

Signature of the individual listed above

_____

Date

Failure to provide the requisite notice to plan participants renders a group health plan ineligible for the temporary enforcement safe harbor.

EXHIBIT D

News

FOR IMMEDIATE RELEASE
June 28, 2013

Contact: HHS Press Office
(202) 690-6343

Administration issues final rules on contraception coverage and religious organizations

Today, the Obama administration issued final rules that balance the goal of providing women with coverage for recommended preventive care—including contraceptive services prescribed by a health care provider—with no cost-sharing, with the goal of respecting the concerns of non-profit religious organizations that object to contraceptive coverage. The final rules reflect public feedback received in response to the Notice of Proposed Rulemaking issued in February 2013.

"The health care law guarantees millions of women access to recommended preventive services at no cost," said Health and Human Services Secretary Kathleen Sebelius. "Today's announcement reinforces our commitment to respect the concerns of houses of worship and other non-profit religious organizations that object to contraceptive coverage, while helping to ensure that women get the care they need, regardless of where they work."

Today's final rules finalize the proposed simpler definition of "religious employer" for purposes of the exemption from the contraceptive coverage requirement in response to concerns raised by some religious organizations. These employers, primarily

houses of worship, may exclude contraceptive coverage from their health plans for their employees and their dependents.

The final rules also lay out the accommodation for other non-profit religious organizations—such as non-profit religious hospitals and institutions of higher education—that object to contraceptive coverage. Under the accommodation these organizations will not have to contract, arrange, pay for or refer contraceptive coverage to which they object on religious grounds, but such coverage is separately provided to women enrolled in their health plans at no cost. The approach taken in the final rules is similar to, but simpler than, that taken in the proposed rules, and responds to comments made by many stakeholders.

With respect to an insured health plan, including a student health plan, the non-profit religious organization provides notice to its insurer that it objects to contraception coverage. The insurer then notifies enrollees in the health plan that it is providing them separate no-cost payments for contraceptive services for as long as they remain enrolled in the health plan.

Similarly, with respect to self-insured health plans, the non-profit religious organization provides notice to its third party administrator that objects to contraception coverage. The third party administrator then notifies enrollees in the health plans that it is providing or arranging separate no-cost payments for contraceptive services for them for as long as they remain enrolled in the health plan.

The final rules provide more details on the accommodation for both insurers and third party administrators.

The final rules strike the appropriate between respecting the religious considerations raised by non-profit religious organizations and increasing access to important preventive services for women.

The final rules are available here: http://www.ofr.gov/OFRUpload/OFRData/2013-15866_PI. pdf

For more information about today's final rules visit: http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womenspreven-02012013.html

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Note: All HHS press releases, fact sheets and other news materials are available at http://www.hhs.gov/news.

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Follow HHS Secretary Kathleen Sebelius on Twitter @Sebelius.

Last revised: August 5, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PRIESTS FOR LIFE, *et al.*, Plaintiffs -v- DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Case No. 1:13-cv-01261-EGS **SUPPLEMENTAL DECLARATION OF PRIESTS FOR LIFE**

I, Father Frank Pavone, make this declaration pursuant to 28 U.S.C. § 1746. This supplemental declaration is made on behalf of Priests for Life and thus based on information known by me and information provided to me by the organization.

1. I am an adult citizen of the United States, a Roman Catholic priest, and a plaintiff in this case.

2. I am the National Director of Priests for Life, which is a nonprofit corporation that is incorporated under the laws of the State of New York. It is recognized by the Internal Revenue Service as a Section 501(c)(3) organization.

3. Priests for Life is a religious organization that follows the teachings of the Roman Catholic Church. However, Priests for Life is not a church or a religious order and thus *not* an organization that is referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. As a result, Priests for Life does not qualify for the "religious employer"

exemption from the contraceptive services mandate, which is the subject of this litigation.

4. This supplemental declaration is made to ensure that there is no mistake regarding Priests for Life's religious objection to the contraceptive services mandate and its so-called "accommodation."

5. Priests for Life cannot and will not submit to *any* requirement imposed by the federal government that has the purpose or effect of providing access to or increasing the use of contraceptive services. This specifically includes the requirement under the so-called "accommodation" that Priests for Life provide its healthcare insurer with a "self-certification" that will then trigger the insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries" of Priests for Life's health care plan. This "self-certification" is the moral and factual equivalent of an "authorization" by Priests for Life to its insurer to provide coverage for contraceptive services to its plan participants and beneficiaries. Priests for Life is prohibited based on its sincerely held religious beliefs from cooperating in this manner with the federal government's immoral objectives.

6. These sincerely held religious beliefs, which prohibit Priests for Life from executing the "self-certification," are neither trivial nor immaterial, but rather central to the teaching and core moral admonition of our faith, which requires us to avoid mortal sin. Thus, neither Plaintiffs nor Priests for Life can condone, promote, or cooperate with the government's illicit goal of increasing access to and utilization of contraceptive services—the express goal

of the challenged mandate and the government's so-called "accommodation."

7 Because Priests for Life cannot and will not authorize coverage for contraceptive services to its plan participants and beneficiaries via the government's "self-certification" requirement, Priests for Life will have to decide whether to drop its healthcare coverage, which will adversely affect it as an organization and its employees, including Dr. Alveda King and Ms. Janet Morana, both of whom are plaintiffs in this case, or pay the fines associated with having a healthcare plan that does not include coverage for contraceptive services. These penalties, which I understand to be $100 per day per employee, will cripple Priests for Life financially. Consequently, these penalties will not only adversely affect Priests for Life as an organization, they will adversely affect Priests for Life's employees, either through a drastic reduction in their salaries or the loss of employment simply because Priests for Life will no longer be able to sustain itself financially.

8. Finally, the government's refusal to truly accommodate Priests for Life's religious objections to the contraceptive services mandate by exempting the organization from its requirements altogether is confounding, and this particularly true since the Anglican Church, for example, which does not oppose contraceptive services, is automatically eligible for the "religious employer" exemption, but Priests for Life is not. This is religious discrimination pure and simple.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 29th day of October, 2013.

/s/ Father Frank Pavone

Father Frank Pavone

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PRIESTS FOR LIFE, *et al.*,

Plaintiffs

-v-

DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Case No. 1:13-cv-01261-EGS

SUPPLEMENTAL DECLARATION OF ROBERT J. MUISE

I, Robert J. Muise, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge and/or verifiable information and belief.

1. I am an adult citizen of the United States and co-lead counsel for Plaintiffs in the above-captioned case.

2. Attached to this declaration as Exhibit A is true and correct copy of a news release from the U.S. Department of the Treasury dated July 2, 2013, in which the Obama administration announced "that it will provide an additional year before the ACA mandatory employer and insurer reporting requirement begins" and that it was "extending this transition relief to the employer shared responsibility payments." Consequently, "[t]hese payments will not apply for 2014. Any employer shared responsibility payment will not apply until 2015." This news release was posted on the official website of the U.S. Department of the Treasury and can be found here: http://www.treasury.gov/connect/blog/pages/continuin

g-to-implement-the-aca-in-a-careful-thoughtful-manner-.aspx. This website was last visited on October 30, 2013.

3. Attached to this declaration as Exhibit B is a true and correct copy of a "News Release" dated January 20, 2012, and titled, "A Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius," which was posted on the official website of the U.S. Department of Health & Human Services and can be found here: http://www.hhs.gov/news/press/2012pres/01/20120120a.html. This website was last visited on October 28, 2013.

4. Attached to this declaration as Exhibit C is a true and correct copy of a CNS News report titled, "Sebelius: Decrease in Human Beings Will Cover Cost of Contraception Mandate." The news report, which also contains an embed video of the testimony of Secretary Sebelius before the House Energy and Commerce Subcommittee on Health, can be found here: http://cnsnews.com/news/article/sebelius-decrease-human-beings-will-cover-cost-contraception-mandate. This website was last visited on October 28, 2013.

5. Attached to this declaration as Exhibit D are two resolutions from the Lambeth Conference, which is an assembly of Anglican bishops. The first resolution is from the 1930 conference. During this conference, the Anglican Church announced that contraception would be permissible in some circumstances. A true and accurate copy of Resolution 15 from the 1930 conference is attached as part of Exhibit D and can be found here:

http://www.lambethconference.org/resolutions/1930/1930-15.cfm. The second resolution is from the 1958 conference. During this conference, the Anglican Church affirmed that contraception was not morally impermissible. A true and accurate copy of Resolution 115 from the 1958 conference is attached as part of Exhibit D and can be found here: http://www.lambethconference.org/resolutions/1958/1958-115.cfm. This website was last visited on October 28, 2013. In short, unlike the Catholic Church, the Anglican Church does not hold that the use of contraception is intrinsically evil and, therefore, prohibited.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of October, 2013.

/s/ Robert J. Muise

Robert J. Muise, Esq.

EXHIBIT A

U.S. DEPARTMENT OF THE TREASURY

Treasury Notes

Continuing to Implement the ACA in a Careful, Thoughtful Manner

By: Mark J. Mazur 7/2/2013

Over the past several months, the Administration has been engaging in a dialogue with businesses—many of which already provide health coverage for their workers—about the new employer and insurer reporting requirements under the Affordable Care Act (ACA). We have heard concerns about the complexity of the requirements and the need for more time to implement them effectively We recognize that the vast majority of businesses that will need to do this reporting already provide health insurance to their workers, and we want to make sure it is easy for others to do so. We have listened to your feedback. And we are taking action.

The Administration is announcing that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin. This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees. Within the next week, we will publish formal guidance describing this transition. Just like the Administration's effort to turn the initial 21-page application for health insurance into a three-page application, we are working hard to adapt and to be

flexible about reporting requirements as we implement the law.

Here is some additional detail. The ACA includes information reporting (under section 6055) by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting (under section 6056) by certain employers with respect to the health coverage offered to their full-time employees. We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders—including those responsible employers that already provide their full-time work force with coverage far exceeding the minimum employer shared responsibility requirements—in an effort to minimize the reporting, consistent with effective implementation of the law.

Once these rules have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

We recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. **Accordingly, we are extending this transition relief to the employer shared responsibility payments. These payments will not apply for 2014. Any employer shared responsibility payments will not apply until 2015.**

During this 2014 transition period, we strongly encourage employers to maintain or expand health coverage. Also, our actions today do not affect employees' access to the premium tax credits available under the ACA (nor any other provision of the ACA).

Mark J. Mazur is the Assistant Secretary for Tax Policy at the U.S. Department of the Treasury.

Posted in: Tax Policy

EXHIBIT B

News Release

FOR IMMEDIATE RELEASE
January 20, 2012

Contact: HHS Press Office
(202) 690-6343

A statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius

In August 2011, the Department of Health and Human Services issued an interim final rule that will require most health insurance plans to cover preventive services for women including recommended contraceptive services without charging a co-pay, co-insurance or a deductible. The rule allows certain non-profit religious employers that offer insurance to their employees the choice of whether or not to cover contraceptive services. Today the department is announcing that the final rule on preventive health services will ensure that women with health insurance coverage will have access to the full range of the Institute of Medicine's recommended preventive services, including all FDA -approved forms of contraception. Women will not have to forego these services because of expensive co-pays or deductibles, or because an insurance plan doesn't include contraceptive services. This rule is consistent with the laws in a majority of states which already require contraception coverage in health plans, and includes the exemption in the interim final rule allowing certain religious organizations not to provide contraception coverage. Beginning August 1, 2012, most new and renewed health plans will be

required to cover these services without cost sharing for women across the country.

After evaluating comments, we have decided to add an additional element to the final rule. Nonprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law. Employers wishing to take advantage of the additional year must certify that they qualify for the delayed implementation. This additional year will allow these organizations more time and flexibility to adapt to this new rule. **We intend to require employers that do not offer coverage of contraceptive services to provide notice to employees, which will also state that contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support.** We will continue to work closely with religious groups during this transitional period to discuss their concerns.

Scientists have abundant evidence that birth control has significant health benefits for women and their families, **is documented to significantly reduce health costs,** and is the most commonly taken drug in America by young and middle-aged women. This rule will provide women with greater access to contraception by requiring coverage and by prohibiting cost sharing.

This decision was made after very careful consideration, including the important concerns some have raised about religious liberty. I believe this proposal strikes the appropriate balance between

respecting religious freedom and increasing access to important preventive services. The administration remains fully committed to its partnerships with faith-based organizations, which promote healthy communities and serve the common good. And this final rule will have no impact on the protections that existing conscience laws and regulations give to health care providers.

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EXHIBIT C

Sebelius: Decrease in Human Beings Will Cover Cost of Contraception Mandate

(CNSNews.com) — Health and Human Services Secretary Kathleen Sebelius told a House panel Thursday that a reduction in the number of human beings born in the United States will compensate employers and insurers for the cost of complying with the new HHS mandate that will require all health-care plans to cover sterilizations and all FDA-approved contraceptives, including those that cause abortions.

"The reduction in the number of pregnancies compensates for the cost of contraception," Sebelius said. She went on to say the estimated cost is "down not up."

Sebelius took questions from the House Energy and Commerce Subcommittee on Health about President Barack Obama's fiscal year 2013 budget proposal.

Health and Human Services Secretary Kathleen Sebelius said on Nov. 14, 2011 that $1 billion in health care grants were a way of 'sparking' the U.S. economy. (CNSNews.com/Penny Starr)

Because the Catholic church teaches that sterilization, contraception or abortion are wrong and that Catholics must not be involved in them, the regulation forces Catholics—and members of other religious denominations that share those views—to act against the teachings of their faith. Numerous lawsuits have already been asserting that the rule violates the First Amendment's guarantee to the free exercise of religion. Many of the nation's Catholic bishops have published letters saying: "We cannot—we will not—comply with this unjust law "

Sebelius, however, insisted that the mandate "upholds religious liberty."

"The rule which we intend to promulgate in the near future around implementation will require insurance companies, not a religious employer, but the insurance company to provide coverage for contraceptives," Sebelius told the subcommittee.

The Catholic bishops have called for the regulation to be rescinded in its entirety, so that no employer, insurer or individual is forced to act against his or her conscience.

During the subcommittee hearing, Rep. Tim Murphy (R-Pa.) said that contraception provided by insurance companies to people employed by religious organizations under the future form of the rule Sebelius described would not be was not free.

"Who pays for it? There's no such thing as a free service," Murphy asked.

Sebelius responded that that is not the case with insurance.

"The reduction in the number of pregnancies compensates for cost of contraception," Sebelius answered.

Murphy expressed surprise by the answer.

"So you are saying, by not having babies born, we are going to save money on health care?" Murphy asked. Sebelius replied, "Providing contraception is a critical preventive health benefit for women and for their children."

Murphy again sought clarification.

"Not having babies born is a critical benefit. This is absolutely amazing to me. I yield back," he said.

Sebelius responded, "Family planning is a critical health benefit in this country, according to the Institute of Medicine."

Rep. Brett Guthrie (R-Ky.), a member of the subcommittee, said after the hearing that if mandating contraception saves money there shouldn't be a need for a mandate.

"Their argument is this: Health insurance companies will offer it for free because they make money. You reduce the number of people getting pregnant therefore you reduce the cost of pregnancy, or low birth weight pregnancies or other kind of pregnancies," Guthrie told CNSNews.com.

"If you think about it, why don't health insurance companies provide it now if the argument is health insurance companies are going to make a lot of money? If the health insurance companies were really acting in their own best interest, they would be giving these pills out for free, if it really saved money," Guthrie added.

Despite the controversy over whether the mandate is constitutional, Sebelius told Rep. Marsha Blackburn (R-Tenn.) during the hearing that the administration never sought a legal opinion about the regulation from the Department of Justice.

[cns-donate]

EXHIBIT D

Resolutions from 1930

Resolution 15

The Life and Witness of the Christian Community—Marriage and Sex

Where there is clearly felt moral obligation to limit or avoid parenthood, the method must be decided on Christian principles. The primary and obvious method is complete abstinence from intercourse (as far as may be necessary) in a life of discipline and self-control lived in the power of the Holy Spirit. Nevertheless in those cases where there is such a clearly felt moral obligation to limit or avoid parenthood, and where there is a morally sound reason for avoiding complete abstinence, the Conference agrees that other methods may be used, provided that this is done in the light of the same Christian principles. The Conference records its strong condemnation of the use of any methods of conception control from motives of selfishness, luxury, or mere convenience.

Voting: For 193; Against 67.

Resolutions from 1958

Resolution 115

The Family in Contemporary Society—Marriage

The Conference believes that the responsibility for deciding upon the number and frequency of children has been laid by God upon the consciences of parents everywhere; that this planning, in such ways as are mutually acceptable to husband and wife in Christian conscience, is a right and important factor in

Christian family life and should be the result of positive choice before God. Such responsible parenthood, built on obedience to all the duties of marriage, requires a wise stewardship of the resources and abilities of the family as well as a thoughtful consideration of the varying population needs and problems of society and the claims of future generations.

No. 14-1505

U.S. District Court

District of Columbia (Washington, DC)

CIVIL DOCKET FOR CASE #: 1:13-cv-01441-ABJ

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON et al v. SEBELIUS et al
Assigned to: Judge Amy Berman Jackson
Case: *1:12-cv-00815-ABJ*
Case in other court: 13-05371
14-05021
Cause: 28:2201 Declaratory Judgment

Date Filed: 09/20/2013
Date Terminated: 01/27/2014
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

09/20/2013	COMPLAINT against JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY (Filing fee $ 400 receipt number 0090-3474476) filed by VICTORY HOUSING, INC., CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., ROMAN CATHOLIC ARCHBISHOP OF

	WASHINGTON, CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC UNIVERSITY OF AMERICA, CATHOLIC INFORMATION CENTER, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., THOMAS AQUINAS COLLEGE, MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., (Attachments: # 1 Civil Cover Sheet, # 2 Supplement Related Case Form, # 3 Summons, # 4 Summons, # 5 Summons, # 6 Summons, # 7 Summons, # 8 Summons, # 9 Summons, # 10 Summons) (Francisco, Noel) (Entered: 09/20/2013)
	* * *
09/24/2013	MOTION for Preliminary Injunction by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF

THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC. (Attachments: # 1 Memorandum in Support, # 2 Affidavit Exhibit A, # 3 Affidavit Exhibit B, # 4 Affidavit Exhibit C, # 5 Affidavit Exhibit D, # 6 Affidavit Exhibit E, # 7 Affidavit Exhibit F, # 8 Affidavit Exhibit G, # 9 Affidavit Exhibit H, # 10 Affidavit Exhibit I, # 11 Affidavit Exhibit J, # 12 Text of Proposed Order) (Francisco, Noel) (Entered: 09/24/2013)

* * *

10/10/2013 13 ADMINISTRATIVE RECORD by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY. (See Docket Entry 12 to view document) (jf,) (Entered:

10/10/2013)

* * *

10/11/2013	22	ENTERED IN ERROR.....MOTION to Dismiss *or, in the alternative*, MOTION for Summary Judgment by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY (Attachments: # 1 Memorandum in Support, # 2 Statement of Facts, # 3 Text of Proposed Order)(Pruski, Jacek) Modified on 10/15/2013 (jf,). (Entered: 10/11/2013)

* * *

10/15/2013	25	AMICUS BRIEF by AMERICAN CIVIL LIBERTIES UNION. (jf,) (Entered: 10/16/2013)
10/16/2013	26	Amended MOTION to Dismiss *or, In the Alternative, For Summary Judgment*, MOTION for Summary Judgment by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY (Attachments: # 1 Memorandum in Support, # 2 Statement of Facts, #

		3 Text of Proposed Order)(Pruski, Jacek) (Entered: 10/16/2013)
10/25/2013	27	Cross MOTION for Summary Judgment by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC. (Attachments: # 1 Memorandum in Support, # 2 Statement of Facts, # 3 Declaration, # 4 Appendix Part 1, # 5 Appendix Part 2, # 6 Appendix Part 3, # 7 Text of Proposed Order)(Francisco, Noel) (Entered: 10/25/2013)
10/25/2013	28	Memorandum in opposition to re 26 Amended MOTION to Dismiss

		or, In the Alternative, For Summary Judgment MOTION for Summary Judgment filed by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC., (Attachments: # 1 Statement of Facts Response to Defendants' Statement of Facts, # 2 Text of Proposed Order)(Francisco, Noel) (Entered: 10/25/2013)
10/28/2013	29	REPLY to opposition to motion re 6 MOTION for Preliminary Injunction , filed by ARCHBISHOP CARROLL HIGH

SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC., (Francisco, Noel) Modified on 10/29/2013 (jf,). (Entered: 10/28/2013)

* * *

11/05/2013 31 Memorandum in opposition to re 27 Cross MOTION for Summary Judgment *filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY. (Attachments: # 1 Defs.' Response*

		to Pls.' Statement of Facts)(Pruski, Jacek) Modified on 11/6/2013 (jf,). (Entered: 11/05/2013)
11/06/2013		Minute Entry for proceedings held before Judge Amy Berman Jackson: Telephone Conference held in Courtroom #3 on 11/6/2013. (Court Reporter Vicki Eastvold) (jth) (Entered: 11/06/2013)
11/06/2013	32	REPLY to opposition to motion re 26 Amended MOTION to Dismiss *or, In the Alternative, For Summary Judgment* MOTION for Summary Judgment filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY. (Pruski, Jacek) (Entered: 11/06/2013)
		* * *
11/12/2013	33	REPLY to opposition to motion re 27 Cross MOTION for Summary Judgment filed by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF

	THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC., (Attachments: # 1 Exhibit Archdiocese Supplemental Affidavit, # 2 Exhibit CCA Supplemental Affidavit, # 3 Exhibit ACHS Supplemental Affidavit, # 4 Exhibit Don Bosco Supplemental Affidavit, # 5 Exhibit Mary of Nazareth Supplemental Affidavit, # 6 Exhibit Catholic Charities Supplemental Affidavit, # 7 Exhibit Victory Housing Supplemental Affidavit, # 8 Exhibit CIC Supplemental Affidavit, # 9 Exhibit CUA Supplemental Affidavit, # 10 Exhibit TAC Supplemental Affidavit)(Francisco, Noel) (Entered: 11/12/2013)
11/22/2013	Minute Entry for Proceedings held before Judge Amy Berman Jackson: Motions Hearing held on

		11/22/2013 re: Defendants' 26 Amended Motion to Dismiss *or, In the Alternative, For Summary Judgment*, and Plaintiffs' 27 Cross Motion for Summary Judgment. The Motions 26 27 were Heard and Taken Under Advisement. (Court Reporter Chantal Geneus) (jth) (Entered: 11/22/2013)
		* * *
12/4/2013	36	RESPONSE TO ORDER OF THE COURT re 35 Order filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY. (Pruski, Jacek) (Entered: 12/04/2013)
12/11/2013	39	RESPONSE TO ORDER OF THE COURT re 37 Order filed by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH

		SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC.,(Francisco, Noel) (Entered: 12/11/2013)
12/11/2013	40	RESPONSE TO ORDER OF THE COURT re 37 Order filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY. (Pruski, Jacek) (Entered: 12/11/2013)

* * *

12/17/2013	42	RESPONSE TO ORDER OF THE COURT re Order filed by ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON. (Francisco, Noel) (Entered: 12/17/2013)

* * *

12/20/2013	47	ORDER granting in part and denying in part 26 Defendants' Motion to Dismiss, or in the alternative, for Summary Judgment, and granting in part and denying in part 27 Plaintiffs'

		Cross-Motion for Summary Judgment. (SEE ORDER FOR DETAILS). Signed by Judge Amy Berman Jackson on 12/20/2013. (lcabj1) (Entered: 12/20/2013)
12/20/13	48	MEMORANDUM AND OPINION. Signed by Judge Amy Berman Jackson on 12/20/2013. (lcabj1) (Entered: 12/20/2013)
12/21/2013	49	MOTION for Injunction Pending Appeal by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, VICTORY HOUSING, INC. (Attachments: # 1 Text of Proposed Order)(Francisco, Noel) (Entered: 12/21/2013)

12/21/2013	50	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 47 Order on Motion to Dismiss, Order on Motion for Summary Judgment 48 Memorandum & Opinion by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, VICTORY HOUSING, INC.. Filing fee $ 505, receipt number 0090-3572949. Fee Status: Fee Paid. Parties have been notified. (Francisco, Noel) (Entered: 12/21/2013)
		* * *
12/23/2013	52	ORDER denying 49 Motion Injunction Pending Appeal. (SEE ORDER FOR DETAILS). Signed

		by Judge Amy Berman Jackson on 12/23/2013. (lcabj1) (Entered: 12/23/2013)
		* * *
01/17/14	55	NOTICE OF APPEAL TO DC CIRCUIT COURT by KATHLEEN SEBELIUS, JACOB J. LEW, U.S. DEPARTMENT OF THE TREASURY, THOMAS E. PEREZ, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR. Fee Status: No Fee Paid. Parties have been notified. (Pruski, Jacek) (Entered: 01/17/2014)
01/21/14	56	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals docketing fee was not paid because the fee was an Appeal by the Government re 55 Notice of Appeal to DC Circuit Court,. (znmw) (Entered: 01/21/2014)
		* * *

U.S. Court of Appeals for the District of Columbia Circuit

Court of Appeals Docket #: 13-5371

ROMAN CATHOLIC ARCHBISHOP, et al v. BURWELL, et al

Trial Judge: Amy Berman Jackson

Case: 1:13-cv-01441-ABJ

Docketed: 12/23/2013

Terminated: 11/14/2014

Nature of Suit: 2440 Other Civil Rights

Case Type Information:
1) civil
2) USA as party
3)

12/23/2013 US CIVIL CASE docketed. [13-5371]

12/23/2013 NOTICE OF APPEAL filed [1471908] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. seeking review of a decision by the U.S. District Court in 1:13-cv-01441-ABJ. Assigned USCA Case Number [13-5371]

* * *

12/23/2013 MODIFIED EVENT FROM FILED TO LODGED—MOTION LODGED [1471948] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. for injunction. (Response to Motion served by mail due on 01/06/2014). (Response to Motion served by hand due on 01/02/2014)

12/23/2013 LETTER FILED [1472052] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. pursuant to FRAP 28j advising of additional authorities [Service Date:

12/23/2013] [13-5371] (Francisco, Noel)

12/23/2013 PER CURIAM ORDER filed [1472128] granting motion to exceed page limits [1471929-2]; The Clerk is directed to file the lodged motion for injunction [1471948-2]; It is FURTHER ORDERED, that the federal appellees file a response to the emergency motion, not to exceed 25 pages, by 10:00 am on Friday, December 27. 2013. Apepellants' reply, if any, is due by 10:00 am on Monday, December 30, 2013. The parties are directed to hand deliver the paper copies of their submissions to the court by the time and date due. Before Judges: Henderson and Tatel. [13-5371]

* * *

12/27/2013 RESPONSE IN OPPOSITION FILED [1472628] by DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA to motion for injunction [1471948-2] [Service Date: 12/27/2013 by CM/ECF NDA] Pages: 21-30. [13-5371] (Jed, Adam)

12/27/2013 REPLY FILED [1472781] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey

High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. to response [Service Date: 12/27/2013 by CM/ECF NDA] Pages: 1-10. [13-5371] (Francisco, Noel)

12/30/2013 LETTER FILED [1472901] by DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/30/2013] [13-5371] (Jed, Adam)

12/31/2013 LETTER FILED [1473105] by DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, Thomas Aquinas College, HHS and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/31/2013] [13-5371] (Jed, Adam)

12/31/2013 LETTER FILED [1473135] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of

Washington and Victory Housing, Inc. pursuant to FRAP 28j advising of additional authorities [Service Date: 12/31/2013] [13-5371] (Francisco, Noel)

12/31/2013 PER CURIAM ORDER filed [1473216] granting emergency motions for injunction [1471703-2], [1471948-2]; consolidating cases 13-5371 (Consolidation started 12/31/2013) with 13-5368; directing that appellants show cause why they should not be required to file one joint opening brief limited to 14,000 words and one joint reply brief limited to 7,000 words. Response to Order due 01/14/2014. Before Judges: Henderson, Tatel,* and Brown. (*Circuit Judge Tatel would deny the emergency motions for injunction pending appeal for the reasons in the attached statement.) [13-5368, 13-5371]

* * *

[Case consolidated with *Priests for Life*. Please see docket entries at JA 201]

Excerpts from Complaint in *Roman Catholic Archbishop of Washington v. Sebelius*, No. 1:13-cv-01441 (D.D.C.)

* * *

115. Though committed to remaining a distinctly Catholic institution, the University opens its doors to students, academics, and prospective employees of all faiths and creeds. Over 3600 students are currently enrolled in the University's undergraduate programs, and nearly 3300 are enrolled in its graduate and law programs. The school maintains a regular (full-time) faculty of 426 members and an additional 417 temporary faculty members. CUA also employs approximately 923 staff members.

* * *

128. The College welcomed its first freshman class in 1971, and it has remained faithful to its founding mission ever since. The College currently has 370 full-time students enrolled in its four-year program of Catholic liberal education.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF THE ARCHDIOCESE OF WASHINGTON

I, Jane G. Belford, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I serve as the Chancellor of the Archdiocese of Washington (the "Archdiocese"). I have been so employed in this capacity since 2001.

3. The Chancellor of a diocese/archdiocese is a canonical position that is appointed by a decree of the Archbishop. Chancellor is the highest ecclesiastical or decision-making position a lay person can hold in the church. Under canon law, the principal duty of

the Chancellor is to ensure that the acts and instruments of the diocese are drawn up and faithfully recorded, authenticated and safeguarded. The Chancellor's writing or signature establishes authenticity for such acts and instruments.

4. In the Archdiocese of Washington, the Chancellor has been assigned additional duties by the Archbishop. The Chancellor is designated in the bylaws of every affiliated archdiocesan corporation as one of the three corporate members of that corporation, who, by law, have certain reserved powers that are exercised over every archdiocesan affiliated corporation with regard to their mission, governance, operations, and Catholic identity.

5. Apart from these canonical roles and responsibilities, I also serve as senior legal advisor to the Archdiocese of Washington and provide advice and counsel in all aspects of the Church's civil operations. I report directly to the Archbishop of Washington, Cardinal Donald Wuerl.

6. As Chancellor, I am very familiar with the Archdiocese's mission and religious beliefs. I also am very familiar with the Archdiocese's self-insured health plan. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

7 The Archdiocese is a nonprofit corporation sole, incorporated by Congress in 1948. It is considered to be a Washington, D.C., corporation; its principal place of business is in Hyattsville, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the

meaning of Section 501(c)(3) of the Internal Revenue Code.

8. The Archdiocese has approximately 2,100 benefits-eligible employees.

9. The Archdiocese is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the Archdiocese.

10. Offering a health insurance plan that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the Archdiocese.

11. The Archdiocese operates a self-insured health plan, recognized under the Employee Retirement Income Security Act as a "church plan." The Archdiocese's plan is administered by a third party administrator, National Capital Administrative Services, Inc.

12. The Archdiocese's self-insured health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The Archdiocese has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plan is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act.

13. The plan year for the Archdiocese begins on January 1.

14. The Archdiocesan plan includes the employees of archdiocesan-affiliated ministries such as Plaintiffs Archbishop Carroll High School, the Consortium of Catholic Academies, Don Bosco Cristo Rey High School, Mary of Nazareth Roman Catholic Elementary School, Catholic Charities, Victory Housing, and the Catholic Information Center. Although separately incorporated, these affiliated ministries of education and social service are integral to the exercise of our Catholic faith, participate directly in the Church's mission to minister to God's people, especially the poor and those in need, and are required to remain faithful to the Church's teachings and beliefs.

15. Consistent with Catholic teaching, the Archdiocese has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its church plan.

16. Consistent with the requirements of canon law, the Archdiocese ensures that its separately incorporated ministries remain faithful to the teachings of the Catholic Church. In order to maintain this communion, the Archbishop, the Moderator of the Curia (a canonical position reserved for clergy), and the Chancellor serve as the corporate members of each of these affiliated entities and exercise certain reserved powers such as oversight and authentication of each corporation's mission, the adoption or amendment of a mission statement, and the amendment of articles of incorporation and bylaws. These powers assist the Archdiocese in fulfilling its duty before God to protect the integrity of the Catholic faith as believed and practiced within

the local Church, most especially in its affiliated religious corporations.

17. The regulations at issue in this lawsuit (the "Mandate"), require employers, on pain of substantial and ruinous financial penalties, to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling through their employer health-care plan.

18. Though the Archdiocese meets the Mandate's definition of a religious employer and is thus exempt from facilitating access to the mandated products and services for its own employees, this exemption does not apply to the employees of our affiliated ministries, such as Plaintiffs Archbishop Carroll High School, the Consortium of Catholic Academies, Don Bosco Cristo Rey High School, Mary of Nazareth Roman Catholic Elementary School, Catholic Charities, Victory Housing, and the Catholic Information Center, that participate in the Archdiocese's health plan. They are not exempt from the Mandate.

19. The Mandate thus forces the Archdiocese to either (1) sponsor a plan that will provide the employees of its non-exempt, affiliate ministries with access to "free" contraception, abortion-inducing products, sterilization, and related counseling, or (2) no longer extend its plan to these ministries, subjecting them to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage. The first option forces the Archdiocese to act contrary to its sincerely-held religious beliefs. The second option compels the Archdiocese to submit to the government's

interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

20. Moreover, as a Catholic entity, the Archdiocese bears a particular responsibility to witness to the Church's teachings. The Archdiocese bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance.

21. Taking action that would trigger the provision of the objectionable products and services for the employees of its affiliated entities would be contrary to the Archdiocese's beliefs even in the event that the Archdiocese does not directly fund the objectionable coverage. Of course, any use of the Archdiocese's funds to provide the mandated products and services would only exacerbate the violation of the Archdiocese's religious beliefs.

22. The Archdiocese's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit the Archdiocese's ability to follow this teaching.

23. Potential liability for significant fines and uncertainty regarding the Archdiocese's ability to offer and provide health benefits undermines Archdiocese's ability to retain and recruit employees. Were the Archdiocese to stop offering health benefits, it would be at a competitive disadvantage to

institutions who do not have religious objections to the Mandate.

24. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on the Archdiocese to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Jane G. Belford
Jane G. Belford

STATE OF MARYLAND)
COUNTY OF Calvert)

Sworn to and subscribed before more this 20th day of September, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. ____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF THE CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC.

I, Marguerite Conley, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the Executive Director of The Consortium of Catholic Academies of the Archdiocese of Washington, Inc ("CCA" or the "Consortium"). I have been in that position since June 2010.

3. I am very familiar with the Consortium's mission, religious beliefs, and health insurance

policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. CCA is a nonprofit corporation incorporated in Washington, D.C. Its principal place of business is in Hyattsville, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. CCA employs approximately 119 teachers and staff.

6. I have been informed that CCA does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7 CCA is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the Consortium.

9. Accordingly, though CCA provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except

when used for non- contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, the Consortium's employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by CCA to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CCA's sincere religious beliefs..

11. The so-called "accommodation" does not resolve CCA's religious objection. The Mandate, even in its revised form, forces CCA to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, CCA's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CCA's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on CCA (or the Archdiocese, through whose plan CCA provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CCA's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CCA's employees only for so long as they remain on CCA's plan, and CCA (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying CCA's benefits-eligible employees for

the third party administrator. Ultimately, under both the original and final versions of the Mandate, CCA is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity. CCA bears a particular responsibility to witness to the Church s teachings. CCA bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were the Consortium to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, CCA would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to the Consortium's beliefs even in the event that CCA does not directly fund the objectionable products and services. Of course, any use of the Consortium's funds to provide the mandated products and services would only exacerbate the violation of CCA's religious beliefs.

14. CCA's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit CCA's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding the Consortium's ability to

offer and provide health benefits undermines CCA's ability to retain and recruit employees and students. Were CCA to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on CCA to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Marguerite Conley
Marguerite Conley

STATE OF INSERT) Maryland
COUNTY OF) Calvert
INSERT

Sworn to and subscribed before me this 19th day of September, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF ARCHBISHOP CARROLL HIGH SCHOOL

I, Mary Elizabeth Blaufuss, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the President/CEO of Archbishop Carroll High School. ("ACHS"). I have been the school's CEO since October 2012. Since 2006, I had been Vice- Principal for Academic Affairs at ACHS.

3. I am very familiar with ACHS's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal

knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. ACHS is a nonprofit corporation incorporated in Washington, D.C. Its principal place of business is in Washington, D.C. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. ACHS has seventy employees.

6. I have been informed that ACHS does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7. ACHS is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of ACHS.

9. Accordingly, though ACHS provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non- contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, ACHS employees

are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by ACHS to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to ACHS's sincere religious beliefs..

11. The so-called "accommodation" does not resolve ACHS's religious objection. The Mandate, even in its revised form, forces ACHS to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, ACHS's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of ACHS's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on ACHS (or the Archdiocese, through whose plan ACHS provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is ACHS's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to ACHS's employees only for so long as they remain on ACHS's plan, and ACHS (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying ACHS's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, ACHS is forced, in violation of its sincerely held

religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, ACHS bears a particular responsibility to witness to the Church's teachings. ACHS bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were ACHS to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, ACHS would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to ACHS's beliefs even in the event that ACHS does not directly fund the objectionable products and services. Of course, any use of ACHS's funds to provide the mandated products and services would only exacerbate the violation of ACHS's religious beliefs.

14. ACHS's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit ACHS's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding the school's ability to offer and provide health benefits undermines ACHS's ability to retain and recruit employees and students. Were ACHS to stop offering health benefits, it would be at

a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on ACHS to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Mary Elizabeth Blaufuss
Mary Elizabeth Blaufuss

STATE OF INSERT) Maryland
COUNTY OF) Calvert
INSERT

Sworn to and subscribed before me this 18th day of September, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC.

I, Reverend Steve Shafran, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as President of Don Bosco Cristo Rey High School, Inc. I have

been so employed since July 1, 2006.

3. I am very familiar with Don Bosco's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I

were called upon to testify to them, I could and would competently do so.

4. Don Bosco is a nonprofit corporation incorporated in Maryland. Its principal place of business is in Takoma Park, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code.

5. Don Bosco has 51 employees.

6. I have been informed that Don Bosco does not appear to qualify as an entity described in section 6033(a)(3)(A){i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7 Don Bosco is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Don Bosco.

9. Accordingly, though Don Bosco provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non- contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Don Bosco's

employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Don Bosco to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Don Bosco's sincere religious beliefs.

11. The so-called "accommodation" does not resolve Don Bosco's religious objection. The Mandate, even in its revised form, forces Don Bosco to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Don Bosco's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Don Bosco's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Don Bosco (or the Archdiocese, through whose plan Don Bosco provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Don Bosco's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Don Bosco's employees only for so long as they remain on Don Bosco's plan, and Don Bosco (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying Don Bosco's benefits-eligible employees for the third party administrator. Ultimately, under both the original

and final versions of the Mandate, Don Bosco is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, Don Bosco bears a particular responsibility to witness to the Church's teachings. Don Bosco bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Don Bosco to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Don Bosco would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Don Bosco's beliefs even in the event that Don Bosco does not directly fund the objectionable products and services. Of course, any use of Don Bosco's funds to provide the mandated products and services would only exacerbate the violation of Don Bosco's religious beliefs.

14. Don Bosco's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit Don Bosco's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding Don Bosco's ability to offer and provide health benefits undermines Don Bosco's ability to retain and recruit employees. Were Don

Bosco to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Don Bosco to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s Fr. Steve Shafran
President

STATE OF INSERT) Maryland
COUNTY OF) Calvert
INSERT

Sworn to and subscribed before me this 20th day of September, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC.

I, Michael Friel, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as Principal of Mary of Nazareth Roman Catholic Elementary School. I have been so employed since 2003.

3. I am very familiar with Mary of Nazareth's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Mary of Nazareth is a nonprofit-corporation incorporated in Maryland. Its principal place of business is in Darnestown, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. Mary of Nazareth has 44 employees.

6. I have been informed that Mary of Nazareth does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7 Mary of Nazareth is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Mary of Nazareth.

9. Accordingly, though Mary of Nazareth provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Mary of Nazareth's employees are offered

health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Mary of Nazareth to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Mary of Nazareth's sincere religious beliefs.

11. The so-called "accommodation" does not resolve Mary of Nazareth's religious objection. The Mandate, even in its revised form, forces Mary of Nazareth to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Mary of Nazareth's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Mary of Nazareth's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Mary of Nazareth (or the Archdiocese, through whose plan Mary of Nazareth provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Mary of Nazareth's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Mary of Nazareth's employees only for so long as they remain on Mary of Nazareth's plan, and Mary of Nazareth (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying Mary of Nazareth's benefits-eligible

employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Mary of Nazareth is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, Mary of Nazareth bears a particular responsibility to witness to the Church's teachings. Mary of Nazareth bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Mary of Nazareth to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Mary of Nazareth would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Mary of Nazareth's beliefs even in the event that Mary of Nazareth does not directly fund the objectionable products and services. Of course, any use of Mary of Nazareth's funds to provide the mandated products and services would only exacerbate the violation of Mary of Nazareth's religious beliefs.

14. Mary of Nazareth's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit Mary of Nazareth's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding Mary of Nazareth's ability to offer and provide health benefits undermines Mary of Nazareth's ability to retain and recruit employees. Were Mary of Nazareth to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Mary of Nazareth to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Michael Friel
9/18/13

STATE OF INSERT) Maryland
COUNTY OF) Montgomery
INSERT

Sworn to and subscribed before more this 18th day of September, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON

I, Rev. Msgr. John Enzler, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the President and CEO at Catholic Charities of the Archdiocese of Washington, Inc. ("Catholic Charities"). I have been so employed since July 2011.

3. I am very familiar with Catholic Charities' mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me,

and if I were called upon to testify to them, I could and would competently do so.

4. Catholic Charities is a nonprofit corporation incorporated in Washington, D.C. Its principal place of business is in Washington, D.C. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. Catholic Charities has approximately 890 employees.

6. I have been informed that Catholic Charities does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7. Catholic Charities is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Catholic Charities.

9. Accordingly, though Catholic Charities' provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-

contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Catholic Charities' employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Catholic Charities to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Catholic Charities' sincere religious beliefs.

11. The so-called "accommodation" does not resolve Catholic Charities' religious objection. The Mandate, even in its revised form, forces Catholic Charities to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Catholic Charities' employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Catholic Charities' decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Catholic Charities (or the Archdiocese, through whose plan Catholic Charities provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Catholic Charities' self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Catholic Charities' employees only for so long as they remain on Catholic Charities' plan, and Catholic Charities

(or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying Catholic Charities' benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Catholic Charities is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, Catholic Charities bears a particular responsibility to witness to the Church's teachings. Catholic Charities bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Catholic Charities to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Catholic Charities would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Catholic Charities' beliefs even in the event that Catholic Charities does not directly fund the objectionable products and services. Of course, any use of Catholic Charities' funds to provide the mandated products and services would only exacerbate the violation of Catholic Charities' religious beliefs.

14. Catholic Charities' provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the

provision of objectionable drugs and services—would inhibit Catholic Charities' ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding Catholic Charities' ability to offer and provide health benefits undermines Catholic Charities' ability to retain and recruit employees. Were Catholic Charities to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Catholic Charities to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ John J. Enzler
Rev. Msgr. John Enzler

District of Columbia)
COUNTY OF)
INSERT

Sworn to and subscribed before more this 19th day of September, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF VICTORY HOUSING, INC.

I, James A. Brown, Jr., being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as President of Victory Housing, Inc. I have been so employed since 1991.

3. I am very familiar with Victory Housing's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify them, I could and would competently do so.

4. Victory Housing is a nonprofit corporation incorporated in Maryland. Its principal place of business is in Rockville, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. Victory Housing has approximately 184 employees.

6. I have been informed that Victory Housing does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7. Victory Housing is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Victory Housing.

9. Accordingly, though Victory Housing provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non- contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Victory Housing's

employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Victory Housing to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Victory Housing's sincere religious beliefs.

11. The so-called "accommodation" does not resolve Victory Housing's religious objection. The Mandate, even in its revised form, forces Victory Housing to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Victory Housing's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Victory Housing's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Victory Housing (or the Archdiocese, through whose plan Victory Housing provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Victory Housing's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Victory Housing's employees only for so long as they remain on Victory Housing's plan, and Victory Housing (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying Victory Housing's benefits-eligible employees for the

third party administrator. Ultimately. under both the original and final versions of the Mandate, Victory Housing is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity. Victory Housing bears a particular responsibility to witness to the Church's teachings. Victory Housing bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Victory Housing to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Victory Housing would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Victory Housing's beliefs even in the event that Victory Housing does not directly fund the objectionable products and services. Of course, any use of Victory Housing's funds to provide the mandated products and services would only exacerbate the violation of Victory Housing's religious beliefs.

14. Victory Housing's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services would inhibit Victory Housing's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding Victory Housing's ability to offer and provide health benefits undermines Victory Housing's ability to retain and recruit employees. Were Victory Housing to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Victory Housing to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ James A. Brown, Jr.
James A. Brown, Jr.

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

Sworn to and subscribed before more this 18th day of September, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF CATHOLIC INFORMATION CENTER, INC.

I, Reverend Anne A. Panula, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as Director of the Catholic Information Center. I have been so employed since 2007

3. I am very familiar with CIC's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I

were called upon to testify to them, I could and would competently do so.

4. CIC is a nonprofit corporation incorporated in Washington, D.C. Its principal place of business is in Washington, D.C. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code

5. CIC has approximately 9 employees.

6. I have been informed that CIC does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7. CIC is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of CIC.

9. Accordingly, though CIC provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non- contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, CIC's employees are

offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by CIC to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CIC's sincere religious beliefs.

11. The so-called "accommodation" does not resolve CIC's religious objection. The Mandate, even in its revised form, forces ClC to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, CIC's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CIC's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on CIC (or the Archdiocese, through whose plan CIC provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CIC's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CIC's employees only for so long as they remain on CIC's plan, and CIC (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying CIC's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, CIC is forced, in violation of its sincerely held religious beliefs, to

participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, CIC bears a particular responsibility to witness to the Church's teachings. CIC bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were CIC to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, CIC would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to CIC's beliefs even in the event that CIC does not directly fund the objectionable products and services. Of course, any use of CIC's funds to provide the mandated products and services would only exacerbate the violation of CIC's religious beliefs.

14. CIC's provision of health benefits to. its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit CIC's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding CIC's ability to offer and provide health benefits undermines CIC's ability to retain and recruit employees. Were ere to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on CIC to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ (Rev.) Anne Panula
Director, Catholic
Information Center (CIC)

DISTRICT OF COLUMBIA

Sworn to and subscribed before more this 20th day of November, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

AFFIDAVIT OF THE CATHOLIC UNIVERSITY OF AMERICA

I, Frank G. Persico, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the Chief of Staff and Vice President for University Relations at The Catholic University of America (hereinafter "CUA" or "University"). I have been so employed in this capacity, under different titles, since 2000 and have worked for the University in a variety of executive capacities, including as dean of students, executive director of alumni relations and associate dean of the University's law school since 1974.

3. As Chief of Staff and Vice President for University Relations, I am responsible for or aware of most aspects of the University's day-to-day operations, I coordinate the senior staff, and personally advise the University president.

4. I am very familiar with CUA's mission, religious beliefs, and health insurance policies. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

5. CUA is a nonprofit Washington, D.C., corporation with its principal place of business in Washington, D.C. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

6. I have been informed that CUA does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not quality as a "religious employer."

7. CUA maintains a regular (full-time) faculty of 437 members and an additional 417 temporary faculty members. CUA employs about 923 staff members.

8. CUA's employees are offered health care plans provided by United Healthcare.

9. The plan year for CUA's employer health plan begins on December l.

10. CUA makes available to its students a health plan provided by Aetna.

11. The plan year for CUA's student health plan begins on August 14.

12. The health plans offered by CUA to its employees do not meet the Affordable Care Act's definition of a "grandfathered" plan. CUA has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plans are grandfathered health plans within the meaning of section 1251 of the Affordable Care Act.

13. CUA adheres to the teachings and philosophies of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

14. Offering a health insurance policy that provides coverage for or facilitates access to abortion—inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the University.

15. Accordingly, though CUA provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non- contraceptive purposes), sterilization, and related education and counseling from its health plans.

16. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by the University to facilitate access

to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CUA's sincere religious beliefs.

17. The so-called "accommodation" does not resolve CUA's religious objection. The Mandate, even in its revised form, forces the University to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, the University's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CUA's decision to provide health coverage. CUA also bears the burden of locating and identifying an insurance company willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CUA's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CUA's employees only for so long as they remain on the University's plan, and the University will be forced to further facilitate access to the mandated coverage by, among other things, identifying its benefits-eligible employees for the insurance company. Ultimately, under both the original and final versions of the Mandate, CUA is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

18. For similar reasons, facilitating access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling through its student health- care plan in

the manner required by the Mandate would also violate CUA's sincerely held religious beliefs.

19. Moreover, as a Catholic entity, CUA bears a particular responsibility to witness to the Church's teachings. CUA bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of health insurance. Were the University to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, CUA would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

20. Compliance with the Mandate would be contrary to CUA's beliefs even in the event that the University did not directly fund the objectionable products and services. Of course, any use of CUA's funds to provide the mandated products and services would only exacerbate the violation of the University's religious beliefs.

21. Potential liability for significant fines and uncertainty regarding the University's ability to offer and provide health benefits undermines CUA's ability to retain and recruit employees and students. Were CUA to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

22. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on CUA to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Frank Persico
Frank G. Persico

DISTRICT OF COLUMBIA
/s/ Susan M Weir

Sworn to and subscribed before more this 19th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON., a corporation sole, *et al.*, **Plaintiffs** **v.** **KATHLEEN SEBELIUS, *et al.*,** **Defendants.**	Civil Action No. ____

AFFIDAVIT OF THOMAS AQUINAS COLLEGE

I, Peter L. DeLuca III, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am one of the founders of Thomas Aquinas College (hereinafter the "College"). I have taught at the College since the College opened in 1971 and have served in numerous executive capacities since then including Interim President and Vice President for Development. I am currently employed as Vice President for Finance and Administration and have served in this capacity since 1995. As a founder I am also a permanent member of the College's Board of Governors, its governing body, and serve as the College's Secretary and Treasurer.

3. As Vice President for Finance and Administration, I am responsible for the College's day-to-day operations and financial affairs, I supervise the building construction program, and I personally advise the College's president.

4. I am very familiar with the College's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

5. The College is a non-profit California corporation with its principal place of business in Santa Paula, California. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

6. I have been informed that the College does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7 The College has 78 employees.

8. The College offers its employees a health plan through the RETA Trust, which is a self-insurance trust set up by the Catholic bishops of California for the purpose of providing medical coverage consistent with Catholic moral teaching. The third-party administrator for the RETA Trust is Benefit Allocation Systems.

9. The College's plan year begins on July 1.

10. The health plan offered by the College does not meet the Affordable Care Act's definition of a "grandfathered" plan. The RETA Trust has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plans are grandfathered health plans within the meaning of section 1251 of the Affordable Care Act.

11. The College adheres to the teachings and philosophies of the Roman Catholic Church. The Church teaches that human life begins at the moment of conception, that sexual union should be reserved to marriages in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with conception is immoral.

12. Providing health insurance coverage that includes coverage for, or facilitates access to, abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the College.

13. Accordingly, though the College provides fully-paid health coverage to its employees and dependants, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan.

14. The regulations at issue in this lawsuit (the "Mandate"), however, require the health coverage provided by the College to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related

counseling in a manner contrary to the College's sincere religious beliefs.

15. The so-called "accommodation" does not resolve the College's religious objection. The Mandate, even in its revised form, forces the College to take actions that facilitate access to products and services antiethical to the Catholic faith. Among other things, the College's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of the College's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on the College to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is the College's self-certification of its religious objection that authorized provision of the mandate coverage. This coverage will be made available to the College's employees only for so long as they remain on the College's plan, and the College will be forced to further facilitate access to the mandated coverage by, inter alia, identifying its benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, the College is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

16. Moreover, as a Catholic entity, the College bears a particular responsibility to witness to the Church's teachings. The College bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of health

coverage. Were the College to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, the College would commit further offense of giving scandal by acting in a way inconsistent with Church teachings.

17 Compliance with the Mandate would be contrary to the College's beliefs even in the event that the College does not directly fund the objectionable products and services. Of course, any use of the College's funds to provide the mandated products and services would only exacerbate the violation of the College's religious beliefs.

18. Potential liability for significant fines and uncertainty regarding the College's ability to offer and provide health benefits undermines the College's ability to retain and recruit employees. Were the College to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the mandate.

19. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on the College to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

s/Peter L. DeLuca III
Peter L. DeLuca III

STATE OF CALIFORNIA)
COUNTY OF VENTURA)

Sworn to and subscribed before me
this ___th day of ___ 2013

Office of the General Counsel
3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3300 • FAX 202-541-3337

March 20, 2013

Submitted Electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking on Preventive Services File Code No. CMS-9968-P

Dear Sir or Madam:

On behalf of the United States Conference of Catholic Bishops, we respectfully submit the following comments on the Notice of Proposed Rulemaking ("NPRM") on preventive services. 78 Fed. Reg. 8456 (Feb. 6, 2013).

The current proposal, like previous ones, would mandate coverage of abortifacient drugs, contraceptives, sterilization procedures for women, and related education and counseling in health plans.[1] The comments we file today reflect the same

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[1] We use the term "mandate" or "contraceptive mandate" as shorthand for the requirement that plans cover the aforementioned items. We use the

basic themes as the comments we filed on earlier Administration proposals on this topic:[2]

- Like earlier iterations, the latest proposed regulation requires coverage of sterilization, contraception, and drugs and devices that can cause abortions. These are items and procedures that, unlike other mandated "preventive services," do not prevent disease. Instead, they are associated with an increased risk of adverse health outcomes, including conditions that other "preventive services" are designed to prevent. The proposed regulation is therefore at odds with the purpose of the preventive services provision of the Affordable Care Act ("ACA" or "the Act") upon which that regulation purports to be based. In addition, insofar as the regulation requires coverage of drugs that can operate to cause an abortion, the mandate violates the following: (a) provisions of ACA on abortion and non-preemption, (b) a distinct federal law forbidding government discrimination against health plans that do not cover abortion, and (c) the Administration's own public assurances, both before and after enactment of ACA,

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term "contraceptive coverage," as the NPRM does, to mean coverage of all these items.

[2] Our previous comments, filed in August 2011 and May 2012, are available at http://www.usccb.org/about/general-counsel/rulemaking. Also available at the same link are our September 2010 comments, which predate the mandate but explain why contraceptives and sterilization procedures are not appropriately viewed as "preventive services" and should not be mandated.

that the Act does not require, and would not be construed to require, coverage of abortion. We have raised all these issues previously.

- Under the current proposal, no exemption or accommodation is available at all for the vast majority of individual or institutional stakeholders with religious or moral objections to contraceptive coverage. Virtually all Americans who enroll in a health plan will ultimately be required to have contraceptive coverage for themselves and their dependents, whether they want it or not. Likewise, unless it qualifies as a "religious employer," every organization that offers a health plan to its employees (including many religious organizations) will be required to fund or facilitate contraceptive coverage, whether or not the employer or its employees object to such coverage. This requirement to fund or facilitate produces a serious moral problem for these stakeholders. We have raised all these issues previously.

- Although the definition of an exempt "religious employer" has been revised to eliminate some of the intrusive and constitutionally improper government inquiries into religious teaching and beliefs that were inherent in an earlier definition, the current proposal continues to define "religious employer" in a way that—by the government's own admission—excludes a wide array of employers that are undeniably religious. Those employers therefore remain subject to the mandate. Generally the nonprofit religious organizations that fall on the "non-exempt" side of this religious gerrymander include those organizations that contribute most visibly to the common good through the provision of health,

educational, and social services. We have previously raised problems associated with dividing the religious community into those "religious enough" to qualify for the exemption from the mandate, and those not—especially when that division falsely assumes that preaching one's faith is "religious," while living it out is not. We have likewise previously raised objections to linking the exemption to provisions of the tax code that have nothing to do with health care or conscience.

- The Administration has offered what it calls an "accommodation" for nonprofit religious organizations that fall outside its narrow definition of "religious employer." The "accommodation" is based on a number of questionable factual assumptions. Even if all of those assumptions were sound, the "accommodation" still requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage. Such organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments. We have raised these problems previously, and we raise them again here.

- The mandate continues to represent an unprecedented (and now sustained) violation of religious liberty by the federal government. As applied to individuals and organizations with a religious objection to contraceptive coverage, the mandate violates the First Amendment, the Religious Freedom Restoration Act, and the Administrative Procedure Act. We are willing, now as always, to work with the Administration to reach a just and lawful resolution of these issues. In the meantime,

along with others, we will continue to look for resolution of these issues in Congress[3] and in the courts.[4]

Our more detailed comments follow.

I. *The Mandate is Unchanged.*

The NPRM makes no change in the underlying mandate. For reasons discussed more fully in our earlier comments, we believe the mandate should be rescinded. Contraceptives and sterilization procedures, unlike other mandated "preventive services," do not "prevent" disease. Instead, they disrupt the healthy functioning of the human reproductive system. Furthermore, various contraceptives are associated with adverse health outcomes, including an increased risk of such serious conditions as breast cancer, cardiac failure, and stroke. *See* our comments of August 31, 2011, at 3-4; *see also* our comments of September 17, 2010, at 4. The contraceptive mandate is therefore at war with the statutory provision on which it claims to be based, a provision that seeks to ensure coverage of services that prevent disease, rather than increase the risk of it.

Insofar as it requires coverage of *abortifacient* drugs and devices in particular, the mandate also violates: (a) a provision of ACA dealing with abortion

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[3] *See* H.R. 940, Health Care Conscience Rights Act of 2013, introduced March 4, 2013 by Rep. Diane Black. Currently the bill has over a hundred co-sponsors.

[4] At least 50 lawsuits, with over 150 plaintiffs, have been filed to date challenging the mandate. *See* http://www.becketfund.org/hhsinformationcentral/.

coverage; (b) a provision of ACA dealing with non-preemption of state law; (c) a federal law (the Weldon Amendment) that forbids government discrimination against health plans that do not cover abortion; and (d) the Administration's own public assurances that ACA does not require abortion coverage. The mandate runs afoul of these laws *wholly apart from* the various religious freedom issues that the mandate also creates. We have raised these issues previously, and we raise them again here.

A. *Violation of ACA's Abortion Provision.*

Section 1303(b)(1)(A) of ACA states that "nothing in this title"—*i.e.*, title I of the Act, which includes the provision dealing with "preventive services"—"shall be construed to require a qualified health plan to provide coverage of [abortion] services ... as part of its essential health benefits for any plan year." As Section 1303 goes on to state, it is "the issuer" of a plan that "shall determine whether or not the plan provides coverage of [abortion] services...." Thus, under ACA, it is not the government, but plan issuers, that have the authority to decide whether a plan covers abortion.

There is no indication in the text or legislative history of ACA that Congress intended on the one hand to bar coverage of surgical abortion, but on the other hand to permit—indeed, mandate—coverage of so-called medical (*i.e.*, drug-induced) abortion. Indeed, Congress itself drew no distinction between surgical and medical abortion when, in ACA, it decided to give plans the discretion whether or not to cover abortion. To impute this senseless distinction

to Congress would be an unreasonable construction of the Act.

In particular, one drug approved by the FDA for "emergency contraception" and therefore covered by the mandate, Ella or ulipristal, is said to be just as effective in avoiding a sustained pregnancy even if taken almost a week after sexual activity. Ella is a close analogue to the abortion drug RU-486, described by many medical authorities as having the same ability to induce an abortion even after implantation. In fact, if the FDA in the future were to approve RU-486 for "emergency contraception," a step recommended by officials of the World Health Organization ("WHO"), the Administration's proposed regulation would automatically mandate coverage of RU-486 as well.[5]

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[5] On Ella's close similarity in formula and mode of action to the abortion drug RU-486, see the sources cited in our August 2011 comment letter (p. 5 n.10), and European Medicines Agency, *Evaluation of Medicines for Human Use: CHMP Assessment for Ellaone* (2009), at 8 ("Ulipristal acetate prevents progesterone from occupying its receptor, thus the gene transcription normally turned on by progesterone is blocked, and the proteins necessary to begin and maintain pregnancy are not synthesized") and 16 (in animal tests "ulipristal acetate is embryotoxic at low doses"). WHO experts now call RU-486 itself the "method of choice" for "emergency contraception." S. Mittal and P Aggarwal, *Interventions for emergency contraception: RHL commentary* (last revised: 1 November 2012), the WHO Reproductive Health Library (Geneva: World

B. *Violation of ACA's Non-Preemption Provision.*

Insofar as it requires coverage of any abortifacient drug, the mandate also conflicts with State laws in at least 21 states that restrict abortion coverage in all plans or in all exchange-participating plans.[6] Section 1303(c)(1) of ACA states that nothing in the Act preempts, or has any effect on, any State law

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Health Organization), available at http://apps.who.int/rhl/fertility/contraception/cd001324_mittals_com/en/index.html. If the FDA follows suit, the drug universally known as "the abortion pill" will automatically be included in the "contraceptive" mandate.

[6] Those states are Alabama, Arizona, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wisconsin. *See* Ala. Code §§ 26-23C-1 to 26-23C-4; Ariz. Rev. Stat. Ann. § 20-121; Fla. Stat. Ann. §§ 627.64995, 627.66996, 641.31099; Idaho Code Ann. §§ 41-1848, 41-2142, 41 2210A, 41-3439; Ind. Code Ann. §§ 27-8-33-1, 27-8-33-4; Kan. Stat. Ann. § 40-2,190; Ky. Rev Stat. Ann. § 304.5-160; La. Rev. Stat. Ann. § 22:1014; Miss. Code Ann. §§ 41-41-95 to 41-41-99; Mo. Ann. Stat. § 376.805; Neb. Rev. Stat. §§ 44-8401 to 44-8404; N.D. Cent. Code § 14-02.3-03; Ohio Rev. Code Ann. § 3901.87; Okla. Stat. Ann. tit. 63, § 1 741.3; R.I. Gen. Laws Ann. § 27-18-28; S.C. Code Ann. § 38-71-238; S.D. Codified Laws § 58-17-147; Tenn. Code Ann. § 56-26-134; Utah Code Ann. § 31A-22-726; Va. Acts 2011, c. 823; Wis. Stat. Ann. § 632.8985.

regarding abortion coverage. It follows that any construction of the Act that would preempt State law precluding abortion coverage would violate Section 1303(c)(1). Yet this is precisely what the Administration has done by mandating coverage of abortifacient drugs under the preventive services provision of ACA. As to such drugs, therefore, the mandate is invalid where it conflicts with any state law restricting abortion coverage.

C. *Violation of the Weldon Amendment.*

Under the Weldon Amendment, which has been included in every Labor/HHS appropriations law since 2004, no Labor/HHS funds may be made available to any government agency (including HHS) that discriminates against any health plan on the basis that the plan does not provide abortion coverage.[7] Obviously, to require that plans cover any form of abortion, as a condition for being offered at all, is the most direct form of abortion-based discrimination against plans that seek to exclude such coverage. Insofar as the mandate requires such coverage, it violates the Weldon Amendment.

D. *Violation of Administration Assurances Against Mandatory Coverage of Abortion.*

The mandate violates the Administration's public assurances, both before and after enactment of ACA, that the Act would not be construed to require coverage of abortion. Such assurances played a major role in securing final passage of the bill, and

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[7] For the text of the Weldon Amendment, *see* Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Div. F, § 507(d) (2012).

were formalized in an Executive Order issued by the President. *See* Executive Order 13535, "Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act," 75 Fed. Reg. 15599 (Mar. 24, 2010).

II. *The NPRM Offers No Exemption or Accommodation of Any Kind for Most Stakeholders.*

Well-deserved attention has been paid to the mandate's impact on religious organizations, and the scope of any related exemption or accommodation. This, however, should not obscure the fact that, for the overwhelming majority of stakeholders, the proposed regulation offers *no exemption or accommodation of any kind whatsoever*. Those without an exemption or accommodation include conscientiously-opposed individuals, for-profit employers (whether secular or religious), nonprofit employers that are not explicitly religious organizations (even in cases where their objection is religious in nature), insurers, and third-party administrators. Respect for their consciences demands some adequate legal protection, but under the current proposed regulation they have none.

A. *Institutions.*

For-profit organizations (whether religiously-affiliated or not) and nonprofit organizations having no explicit religious affiliation receive no exemption or accommodation under the proposed regulation. To take one example, even a publisher of Bibles is forbidden to offer its employees a health plan that complies with the publisher's espoused Biblical values. The contraceptive mandate has been

preliminarily enjoined in just such a case. *Tyndale House Publishers v. Sebelius*, No. 12-1635 (RBW), 2012 WL 5817323 (D.D.C. Nov. 16, 2012) (granting preliminary injunction).

Courts have recognized that the mandate violates religious freedom in other cases as well. So far, at least eleven other *for-profit* plaintiffs with religious objections to covering sterilization, contraceptives, or abortifacient drugs have obtained either preliminary or temporary injunctive relief against the mandate. *Annex Medical v. Sebelius*, No. 13-1118 (8th Cir. Feb. 1, 2013) (granting motion for preliminary injunction pending appeal); *Grote v. Sebelius*, No. 13-1077, 2013 WL 362725 (7th Cir. Jan. 30, 2013) (same); *Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353 (7th Cir. Dec. 28, 2012) (same); *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357 (8th Cir. Nov. 28, 2012) (granting stay pending appeal); *Monaghan v. Sebelius*, No. 12-15488 (E.D. Mich. Mar. 14, 2013) (granting preliminary injunction); *Sioux Chief Mfg. Co. v. Sebelius*, No. 13-0036-CV-W-ODS (W.D. Mo. Feb. 28, 2013) (same); *Triune Health Group v. U.S. Dep't of Health & Human Servs.*, No. 12 C 6756 (N.D. Ill. Jan. 3, 2013) (same); *Sharpe Holdings v. U.S. Dep't of Health & Human Servs.*, No. 2:12-CV-92-DDN, 2012 WL 6738489 (E.D. Mo. Dec. 31, 2012) (granting temporary restraining order); *Am. Pulverizer Co. v. U.S. Dep't of Health & Human Servs.*, No. 12-3459-CV-S-RED, 2012 WL 6951316 (W.D. Mo. Dec. 20, 2012) (granting preliminary injunction); *Legatus v. Sebelius*, No. 12-12061, 2012 WL 5359630 (E.D. Mich. Oct. 31, 2012) (same); *Newland v. Sebelius*, No. 1:12-cv-1123-JLK, 2012 WL 3069154 (D. Colo. July 27, 2012) (same). The cited

cases, though not yet finally dispositive on the merits, only tend to confirm the existence and gravity of the religious freedom problems we have repeatedly highlighted. And because courts have been willing to recognize the problem so clearly in the for-profit context, we would expect recognition at least as widespread and strong in cases brought by nonprofit and religious organizations, which generally have yet to reach the merits.

In addition, the proposed regulation fails to recognize the religious and moral objections of insurers and third-party administrators ("TPAs"). All insurers and third-party administrators will be required to provide, or administer and arrange for, respectively, a plan with contraceptive coverage, with the narrow exception of insurers and TPAs that serve only exempt "religious employers."

B. *Individuals.*

Under the Administration's proposal, virtually all Americans who purchase a health plan will ultimately be required to have coverage for contraceptives and sterilization procedures for themselves and their dependents, whether they want such coverage or not. Even the employees of religious organizations that do not qualify as exempt "religious employers" will have no choice in the matter, for the NPRM indicates they are to be "automatically" enrolled in a plan that covers the mandated items. 78 Fed. Reg. at 8463.[8] This appears to be a change

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[8] Language indicating that the separate coverage will be mandatory rather than voluntary appears throughout the preamble of the NPRM and in the

from the Administration's earlier proposal to have

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text of the proposed regulation. *See, e.g.*, 78 Fed. Reg. at 8473 (stating in the proposed regulation that for insured plans, the issuer "must automatically provide health insurance coverage for ... contraceptive services ... through a separate health insurance policy ... for each plan participant and beneficiary"); *id.* at 8474 (same); *id.* at 8475 (same); *id.* at 8473 (stating in the proposed regulation that insurers must inform group plan participants and beneficiaries that "[y]ou and any covered dependents will be enrolled" in the contraceptive-only policy); *id.* at 8474 (same); *id.* at 8475 (same); *id.* at 8463 (stating in the preamble that for insured plans the "issuer would automatically enroll plan participants and beneficiaries" in an individual contraceptive-only policy); *id.* (stating in the preamble that for self-insured plans "a third party administrator ... would automatically arrange" such policies). On the other hand, the language of "offer" does appear once in the preamble of the NPRM in reference to this coverage. *See id.* (stating that for insured plans, contraceptive-only coverage "would be offered ... to plan participants and beneficiaries"). The heavy preponderance of language in both the ANPRM and NPRM, and in the actual text of the proposed regulation, seem to indicate a shift away from voluntary and toward mandatory coverage of contraception for employees of "accommodated" employers. In any event, a clarification is necessary, and we urge the Administration to resolve any ambiguity in favor of giving women the choice to opt out of this coverage.

insurers "*offer* contraceptive coverage directly to the employer's plan participants (and their beneficiaries) *who desire it*." 77 Fed. Reg. 8725, 8728 (Feb. 15, 2012) (emphasis added).[9] While some argue that the mandate vindicates the value of individual women's choice over the religious values of their employers, in fact women will have no freedom of choice either – not the freedom to decline such coverage, nor even the freedom to keep their own minor children from being offered "free" and "private" contraceptive services and related "education and counseling" without their consent.[10] The mandate therefore

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[9] President Obama reinforced this message the same day, stating: "Every woman should be in control of the decisions that affect her own health. Period. ... [I]f a woman's employer is a charity or a hospital that has a religious objection to providing contraceptive services as part of their [sic] health plan, the insurance company – not the hospital, not the charity – will be required to *reach out and offer* the woman contraceptive care free of charge, without co-pays and without hassles." Remarks of the President on Preventive Care, February 10, 2012, at www.whitehouse.gov/the-press-office/2012/02/10/remarks-president-preventive-care (emphasis added).

[10] In addition, in the case of an insured plan, employees of "eligible organizations" who themselves have a religious objection to contraceptive coverage will be contributing to a pool of funds from which the insurer will draw to pay claims for contraceptives and sterilization procedures (as no other pool of funds is available from which to pay such claims). Thus,

poses a threat not only to the rights of employers, religious and secular, but to the religious freedom and parental rights of individuals as well.

III. *Though Improved Slightly in One Respect, the "Religious Employer" Exemption Is Worsened in Another Respect and Remains Problematic in Several Others.*

A. *The Government's Proposed Definition of "Religious Employer" Eliminates Some Problematic Language.*

Under the exemption finalized in February 2012, an exempt "religious employer" was one that met each of four criteria: (1) its purpose is the inculcation of religious values, (2) it primarily hires persons who share the organization's religious tenets, (3) it primarily serves persons who share those tenets, and (4) it is a nonprofit organization of a type described in section 6033(a)(1) and 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.[11] The proposed regulation would eliminate prongs (1) through (3) of this four-

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those employees of "eligible organizations" who share their employer's religious objection to such coverage, like the employer itself, will ultimately be paying for *other people's* contraceptives and sterilization procedures, even if they themselves and their dependents do not use such items or undergo such procedures. We describe the funding problem in greater detail below in Part IV.A. of our comments.

[11] Section 6033(a)(3)(A)(i) and (iii) refer to churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of a religious order.

pronged test. As a result, some of the intrusive and constitutionally improper government inquiries that were inherent in the earlier definition have been eliminated. Although this represents a small improvement in the definition, it continues to be highly objectionable, as discussed further below.

B. *The Government's Proposed Definition of "Religious Employer" Still Excludes Most* Bona Fide *Religious Employers and Therefore Is Still Too Narrow.*

The Administration continues to exclude from the definition of "religious employer" a wide array of organizations that undeniably are "religious" and undeniably "employ" people. Just as before the NPRM, most Catholic ministries of service—such as Catholic hospitals, charities, and schools—are deemed not to be "religious employers" and therefore remain subject to the mandate. By its own admission, the NPRM's change to the definition of "religious employer" will "not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." 78 Fed. Reg. at 8461. The exemption was too narrow before the NPRM, and having changed only slightly in scope, it remains too narrow Instead, the definition of "religious employer" should include all *bona fide* religious employers.

C. *The Government's Proposed Definition of "Religious Employer" Still Reduces Religious Freedom to Freedom of Worship by Limiting the Exemption Almost Exclusively to Houses of Worship.*

As the NPRM itself explains, "the primary goal" of the original definition of "religious employer" was "to exempt the group health plans of houses of worship," and the proposed change to that original definition is designed to achieve that same goal more effectively. *See* 78 Fed. Reg. at 8461. That goal continues to pose a great religious freedom problem, for it continues to create a division—alien to our tradition—between our houses of worship and our ministries of service, and continues to treat the latter as if they had secondary religious importance.[12] Moreover, providing full protection only to houses of worship implies that only the activities of houses of worship are entitled to such protection. But just as religion is not limited to worship, the freedom of religion is not limited to the freedom of worship. Religious freedom must also include the freedom to abide by Church teachings, even outside the four walls of the sanctuary.[13]

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[12] *See* USCCB Administrative Committee, "United for Religious Freedom" (Mar. 14, 2012) (reaffirmed by acclamation of full body of U.S. Catholic Bishops on June 13, 2012).

[13] From the earliest centuries of the Christian church, "the exercise of charity became established as one of her essential activities, along with the administration of the sacraments and the proclamation of the word: love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her as the ministry of the sacraments and preaching of the Gospel." Pope Benedict XVI, Encyclical Letter *Deus caritas est* (2005), no. 22.

As explained further below, the operative language of the Church Amendment of 1973 is the only complete solution to the problem of improperly defining our religious community, for that language avoids entirely the question of which people or groups are deserving of religious freedom protection.[14] The identity of the person or group having the religious freedom objection should not matter; what should matter instead is whether the person or group faces government coercion to violate conscience. Religious freedom is for *all* who face this threat, not just some.

D. *The Government's Proposed Definition of "Religious Employer" Still Cannot Be Reconciled with the Longstanding Precedent of Generous Federal Government Conscience Protection in the Health Care Context.*

Although the new proposed definition of "religious employer"—the fourth part of the original four-part test—does derive from existing federal law, it is wholly unprecedented in its use as a conscience

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[14] Obviously, we are not urging the government simply to "cut and paste" the Church Amendment into the regulations, but instead to apply its core principle in this context. The key point is that conscience protection, as reflected in the Church Amendment and countless other federal laws affording protection to those with religious or moral objections, should continue to be available to *all* individuals and entities with such objections, as they have been over the last several decades, and not simply to some subset of the political community (let alone to some subset of the religious community).

protection at the federal level. The fourth prong describes some (but not all) of the religious institutions that are exempt from the general requirement that nonprofit organizations file the IRS Form 990. In that context, that definition served to reduce the church-state entanglement issues inherent in mandating financial reporting and accountability on the part of churches and religious organizations. However, it does not, and was never intended to, protect against a government requirement that may violate conscience. The Form 990 filing exemptions therefore have no relevance whatsoever to church welfare or benefit plans.

Indeed, if ultimately implemented, the new proposed definition would represent the narrowest protection of conscience in health care anywhere in federal law. As we have noted repeatedly in prior comments, federal conscience protections in the health care context are typically robust. Foremost among these is the Church Amendment of 1973, 42 U.S.C. §300a-7 Its operative language—which protects against government coercion of conduct that "would be contrary to [the] religious beliefs or moral convictions" of individuals or entities—has enjoyed broad bipartisan support, and has been repeated in numerous federal conscience laws over the forty years since its original passage.[15] As we have urged repeatedly before, language like this represents the

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[15] *See* USCCB Secretariat of Pro-Life Activities, "Current Federal Laws Protecting Conscience Rights" (2012) (available at http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf).

only complete solution to the religious freedom problems caused by the mandate.

The NPRM's proposed definition not only disregards this leading option in continuity with the strong, bipartisan tradition of generous federal conscience protection, it disregards an alternative exemption that, while still substantially flawed, would represent a far less radical break from the past. Other prominent commenters have proposed a definition of "religious employer" based on the category of employers whose benefit plans may qualify as "Church Plans" under the Employee Retirement Income Security Act (ERISA). *See* I.R.C. § 414(e). USCCB has declined to endorse this proposal, because it would not extend protection to all nonprofit religious employers,[16] or to any for-profit employers with a religious objection. On the other hand, it is at least based on a law that has some—rather than absolutely no—bearing on health insurance plans, and it would cover substantially more employers than the currently proposed exemption.

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[16] We note that the NPRM's proposed definition of "eligible organization"—if it described the scope of an exemption from the mandate, rather than an "accommodation"—would also represent a substantial improvement in relation to the current proposed definition of "religious employer," since it would encompass all self-identified, nonprofit, religious employers with a religious objection. Unfortunately, this definition instead represents still another less constrictive understanding of "religious employer" that has been needlessly bypassed.

In sum, the revised exemption proposed in the NPRM continues the persistent refusal to follow in the mainstream of federal conscience protection language, or even to opt for a relatively modest departure from that mainstream. If the "houses of worship"—focused approach to conscience protection survives in this context, it will soon spread to others. Regulatory assurances to the contrary are ineffectual, as they cannot and do not control what may happen beyond the present rulemaking process. Once again, we urge the Administration in the strongest possible terms to reject this radical departure, and to return instead to the bipartisan consensus of the last forty years, which is embodied in the core language of the Church Amendment and the numerous federal conscience protection laws that have followed it.

E. *The Government's Proposed Definition of "Religious Employer" Would Narrow the Exemption Further by Excluding Otherwise Exempt Employers That Extend Their Coverage to the Employees of Other Employers.*

In at least one significant respect the modified definition may make the universe of eligible plans *smaller*. Previously, the Administration suggested that the employees of a non-exempt religious organization might be enrolled in the health plan of an affiliated, exempt religious employer; such a plan would not be required to include contraceptive coverage. 77 Fed. Reg. 16501, 16502 (March 21, 2012) (advance notice of proposed rulemaking); *see* our comments of May 15, 2012, p. 18 (requesting clarification on this issue). In its latest proposed regulation, however, the Administration states that

such opportunities will not be available. 78 Fed. Reg. at 8467 (stating that any exemption or accommodation will be available only on an "employer-by-employer basis"). Thus, under this latest proposed regulation, the range of organizations exempt from the mandate would actually shrink.

F *The Government's Proposed Definition of "Religious Employer" Is Not Reasonably Related to a Legitimate Government Objective.*

As explained above, the proposed test for deciding whether an organization is a "religious employer" is lifted from an entirely different statutory context, one having no bearing whatsoever on health plans or conscience protection. Congress's concern in enacting the Form 990 filing exemptions was financial accountability and tax administration—not health insurance or conscience. As the proposed test for deciding whether an organization is a "religious employer" bears no rational relationship to any legitimate governmental interest that the mandate or the exemption purports to advance, it does not withstand constitutional scrutiny.

As it happens, religious employers that do not fit the regulation's definition of "religious employer" include those organizations that contribute most visibly to the common good through the provision of health, educational, and social services, including Catholic hospitals, colleges, universities, and charities. The Administration claims that employees of such organizations are less likely than the employees of churches, conventions and associations of churches, integrated auxiliaries and religious

orders to share their employer's views about contraceptives and sterilization. 78 Fed. Reg. at 8461-62. What knowledge the government could have about employees' individual religious beliefs seems entirely speculative, as well as irrelevant to the question whether the mandate infringes on the employer's own religious convictions and those of at least some of its employees.

In any event, the Administration's claim of a disparity in religious belief between employee and employer ignores four facts: (1) employees of religiously-affiliated hospitals, colleges, universities, and charities have *chosen* to be employed by such organizations and therefore, as to any employee benefits that those employers provide, have implicitly agreed to the employer's terms of employment, including compensation and benefits; (2) with the rare exception of employee-pay-all coverage, the employees' health coverage is offered, sponsored and paid for in part *by the employer*; (3) employees who disagree with their employer's objection to contraceptive and sterilization coverage are not foreclosed from obtaining such coverage *on their own and from another source* (including through a group or individual plan that they can purchase on the Exchange); and (4) the workplaces of exempt and nonexempt religious organizations in many instances are comparable in terms of the services they provide, and the religious reasons why they provide them.

The last point requires elaboration. The Administration concedes that "if a church maintains a soup kitchen that provides free meals to low-income individuals," that should have no effect on its exempt status. 78 Fed. Reg. at 8461. However, if the very

same church forms an unaffiliated separate corporation through which devout believers can provide free meals to low-income individuals in compliance with Jesus' call to feed the hungry, then that organization is *not* exempt even though it does precisely what the church would do directly had it not housed the services under a separate organization. Thus, the availability of an exemption from the contraceptive mandate will often depend upon, as it were, the accident of corporate form rather than what the church believes and does. In our example, the church and separately-incorporated organization provide the same services. Each is motivated by the same religious belief. Given those similarities, we fail to see how the government's interest in ensuring access to health coverage while accommodating conscience is furthered by denying an exemption, based solely on how the organization providing soup kitchen services is structured.

As another example of the lack of reasonable relation between the Form 990 filing requirement and the exemption, consider the activities of a religious order. If the order engages in "exclusively religious" activities, its health plan is exempt from the mandate. But if the very same religious order runs a religious bookstore, sells fruit preserves, or performs some other work as a means of supporting itself, any health coverage offered in connection with the latter is not exempt from the contraceptive mandate even if the only employees are the devout members of the order or lay people who share its beliefs.

Even if an exemption from the Form 990 filing requirement bore a reasonable relation to the

exemption from the mandate (which, we explain above, is not the case), the latter is under-inclusive. Many organizations, including "educational organizations" below the college level that are affiliated with a church or operated by a religious organization, are exempt from the requirement to file an annual return. *See* 26 C.F.R. § 1.6033-2(g). But these organizations, exempt as they are from the filing requirement, are not exempt from the mandate because they are not churches, conventions or associations of churches, integrated auxiliaries, or the exclusively religious activities of religious orders. If exemption from the Form 990 filing requirement is a reasonable proxy for exemption from the mandate, then why are churches, conventions and associations of churches, integrated auxiliaries, and the exclusively religious activities of religious orders the *only* non-filers exempt from the mandate?

IV *The Accommodation Described in the NPRM Does Not Appear to Meaningfully Accommodate Even Those Stakeholders That Qualify for It.*

Now as before, it does not appear that what the Administration describes as an "accommodation" for "eligible organizations" (those religious employers that do not qualify for an exemption) will actually relieve them of the burden on religious liberty that the mandate creates.

A. *Insured plans.*

Under the proposed regulation, the plan sponsor (the employer) and enrollees (employees and their dependents) would pay for a group plan that excludes contraceptive coverage. The issuer of the group plan would then "automatically" issue a "separate"

individual policy to each enrollee for contraceptive coverage. 78 Fed. Reg. at 8462-63. The NPRM recites that the issuer would assume "sole responsibility, independent of the eligible organization and its plan," for providing such an individual policy, and would do so "without cost sharing, premium, fee, or other charge to plan participants and beneficiaries." *Id.* at 8462. In addition, the NPRM states that "no fee or other charge in connection with [the contraceptive] coverage is imposed on the eligible organization or its [group] plan." *Id.*

If there is no charge to the plan sponsor or enrollees, the question arises: what funds will the insurer use to pay for contraceptives, sterilization procedures, and related education and counseling? The NPRM does not say, but says only that "such ... coverage is *cost neutral* because [the insurer] would be insuring the *same set of individuals* under both policies and would experience lower costs from improvements in women's health and fewer childbirths." *Id.* at 8463 (emphasis added).

This cost-neutral assumption ignores the insurer's additional administrative costs in administering the companion contraceptive coverage program. In any event, even if this assumption were valid, there is only one funding stream from which contraceptives, sterilization procedures, and related education and counseling for these enrollees can be paid: contributions made by the sponsor of the group plan and its enrollees. It necessarily follows that, even though contraceptive coverage is housed under "separate" individual plans, it is not truly separate, and the objecting employer and enrollees are ultimately paying for the objectionable services

through their contributions. As there is no statutory authority, and there would appear to be legal constraints, for requiring an insurer to pay for contraceptives and sterilization procedures out of *other* clients' resources, employer and employee contributions to the group plan provide the only pool of funds from which payments for contraceptives and sterilization under the individual contraceptive-only policies can be made.

This seems especially obvious when, as here, the cost savings of reduced childbirths are cited by the Administration as paying for contraceptives and sterilization. As the NPRM itself points out, this only makes sense if the reimbursements come from funds paid *for those same individuals* for childbirth coverage. And those premiums for coverage of childbirth came from the employee and employer. In other words, some of the funds the employer and employee paid for childbirth coverage will, arguably, not be needed for childbirths, and so will be available to reimburse for contraceptives and sterilization instead.[17]

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[17] In pointing out this implication of the Administration's statements, of course, we are not endorsing the apparent assumption that contraceptive coverage necessarily "saves" the "costs" of childbirth, that children are ultimately a burden on rather than a contribution to the economic and other aspects of American well-being, or that, in a society where overall fertility rates are already below replacement levels, there is a compelling or even legitimate government interest in persuading religious Americans or their employees to have fewer

Thus, notwithstanding the Administration's claim that the issuer cannot, "directly or indirectly" (78 Fed. Reg. at 8473), charge the employer or employee for contraceptive coverage, there still seems to be a funding tie between the employer and the objectionable coverage. In addition, the attempted segregation of contraceptive and sterilization procedures is ineffective because plan premiums (and adjustments to premiums) are ultimately based on total claims history, which will now include claims for contraceptives and sterilization procedures—regardless of whether the organization objects to the coverage of those items, and regardless of whether those services are listed in the plan summary or other plan documents.

Put in other terms, if there are actually reduced claims against the employer's main plan as a result of its employees having separate contraceptive-only plans, then in the ordinary course, those cost savings would result in the accommodated employer's paying

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children. On the implications of the plunging U.S. birthrate, see T. Bahrampour, "U.S. birthrate plummets to its lowest level since 1920," *The Washington Post*, November 29, 2012, at http://articles.washingtonpost.com/2012-11-29/local/35585758_1_birthrate-immigrant-women-population- growth ("The decline could have far-reaching implications for U.S. economic and social policy. A continuing decrease could challenge long-held assumptions that births to immigrants will help maintain the U.S. population and create the taxpaying workforce needed to support the aging baby-boom generation.").

reduced premiums in subsequent years. But under the proposed accommodation for insured plans, if claims against the main plan actually are reduced, the employer would *not* pay a reduced premium for that plan. Instead, the employer's premium would remain as high as previously, even though its claims experience should result in a lower premium. And it is precisely that increment of premium over the actual experience-based cost that would pay for the separate contraceptive-only policy. In this way, the accommodated employer's (and employees') premiums for the main health plan are paying for the contraceptive-only policy.

Even apart from the proposed rule's flawed accounting mechanisms, the claimed "accommodation" still requires religious organizations to facilitate access to objectionable services in direct contravention of their sincerely-held religious beliefs. Insofar as the insurer is providing *individual* policies for contraceptive coverage by virtue of the participants' enrollment in the *group* plan, the purchase of contraceptives and sterilization procedures is ultimately facilitated by the group plan which the religious objector has offered to, and purchased for, its employees. So even if the purchaser's premiums were somehow segregated to eliminate the funding tie, it is not evident that it would resolve the moral problem. In effect, offering a group health plan would operate automatically as a "ticket" or "trigger" for contraceptive coverage. The employee (and her dependents such as female minor children) will receive this "entitlement" whether she wants it or not, triggered by her enrollment in a health plan from her religious employer (albeit not a

"religious employer" as the Administration defines it).

As we have pointed out before, this is different from a situation in which an employee uses his or her salary for purposes the employer believes to be intrinsically evil. The difference is that the employee's salary is not earmarked for the purchase of anything – once paid, those funds simply belong to the employee. Health care premiums, by contrast, are paid specifically for the purchase of a health plan. And the fact that the insurer provides contraceptives for "free" under policies that are provided automatically because of enrollment in the employer-sponsored group plan would likewise seem sufficient to establish a burden on the employer's religious freedom.[18]

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[18] It is also morally problematic that the group plan is serving as a gateway for speech ("related education and counseling"), including persuasive speech to minor children, that squarely contradicts the plan sponsor's religious or moral beliefs and possibly those of the adult employee as well. *See, e.g., Keller v. State Bar of California*, 496 U.S. 1 (1990) (holding that state bar members could not be compelled to finance political and ideological activities with which they disagree); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) (holding that state employees could not be required, consistent with the First Amendment, to provide financial support for ideological union activities unrelated to collective bargaining).

Our comments on this proposal are not new. We pointed to the problems of both funding *and* facilitating contraceptive coverage when the idea of having insurers provide contraceptive coverage was first aired. *See* our comments of May 15, 2012, pp. 10-18. As we pointed out then (pp. 12-13), suppression of religious freedom can take at least two forms. It can take the form of making conscientious objectors actively *cooperate with what they see as morally forbidden.* But it can also take the form of depriving those objectors of the right (a right that others continue to exercise) *to do what they see as morally required.* Under the proposed regulation, those who favor contraceptive coverage will retain the right they have always had as employers to provide a health plan consistent with their values. Objecting employers, including many religious organizations, will lose that right, because any plan they offer will be turned into a conduit for the objectionable coverage. The practical outcome for employees and their children is exactly the same as if the organization had no objection. Employees who share the objecting organization's religious tenets are similarly deprived of the freedom to choose a workplace organized according to their own values, and are forced to accept coverage for their families to which they have their own religious or moral objection.[19]

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[19] We should also point out that because all enrollees in the contraceptive-free group plan are provided with individual contraceptive-only policies, *both* the plan sponsor *and* all contributing employees in the group plan are, ultimately, paying for and facilitating

B. *Self-insured plans.*

As described in the NPRM,[20] the Administration proposes that the plan sponsor and employees may pay for a self-insured group plan that excludes contraceptive coverage. However, the third-party administrator ("TPA") is then to find an insurer that will automatically issue individual contraceptive-only plans to all persons enrolled in the group plan (that is, all employees and their dependents). 78 Fed. Reg.

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access to contraceptives and sterilization procedures *even if* many of the enrolled employees and their dependents do not personally make use of the contraceptive-only policy by obtaining contraceptives. In other words, the individual contraceptive-only policies function like one large contraceptive-only group plan, for the persons enrolled in the non-contraceptive group plan are *identical* in all respects to the persons enrolled in the contraceptive-only policies (whether characterized as individual policies or as one large group policy). As a result, conscientiously-opposed employers and employees are, in the aggregate, paying for and facilitating *other* employees' contraceptives and sterilization procedures.

[20] The NPRM does not include the text of a proposed regulation with respect to self-insured plans, but the preamble includes a description of how enrollees in such plans would obtain contraceptive coverage. Our analysis is based on that description. Further comment must await publication of a proposed regulation on self-insured plans.

at 8463.[21] Since the insurer is not providing these individually-insured persons with group coverage of other (non-contraceptive) items and services, the Administration cannot (and does not) make any claim of cost savings as a result of enrollment in the self-insured group plan. As described in the NPRM, however, issuers of contraceptive-only plans will be given an adjustment in the Federally-facilitated Exchange ("FFE") user fee they would otherwise be required to pay to participate in that Exchange.[22]

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[21] The first of the three options described for self-insured plans states only that TPAs will have an "economic incentive" to arrange for contraceptive coverage (which could be read to mean something less than a "requirement" to make such arrangements); elsewhere, the NPRM states that under *all three* options, contraceptive coverage will be provided "automatically." 78 Fed. Reg. at 8463. Obviously we believe contraceptive coverage should not be required, and we ask for clarification on this point.

[22] A recently published regulation defines an FFE as "an Exchange established and operated within a State by the Secretary [of HHS] under section 1321(c)(1) of the Affordable Care Act." 78 Fed. Reg. 15410, 15532 (March 11, 2013). Section 1321(c)(1) authorizes the Secretary to establish an FFE if a state fails to do so. In support of such FFEs, the Administration has proposed that participating issuers pay a monthly user fee. *Id.* at 73213. It is this fee that the Administration now proposes to adjust, as a mechanism for encouraging insurers to offer individual contraceptive-only policies and as a

The insurer, in turn, is required to share a portion of that adjustment with the TPA to offset the latter's administrative cost in arranging individual contraceptive-only coverage.

A number of assumptions are built into this proposal. For example, the proposal assumes that (a) the plan sponsor with a religious or moral objection to contraceptive coverage does not self-administer the plan, (b) the sponsor will be both willing and able to find a TPA that does not share its objection and is willing to arrange such coverage, and (c) TPAs in turn will be willing and able to find an insurer to provide such coverage, and only as consideration for an adjustment in the insurer's FFE user fee. This, in turn, assumes that (d) there is a market of willing insurers that participate, or have an affiliate that participates, in the FFE for which (e) the costs of contraceptives and sterilization procedure will not outpace the adjustment in the insurer's (or its affiliate's) FFE user fee.[23] There may be other assumptions built into the Administration's proposal that would be familiar to those who sell or administer plans and on which they can comment further.[24]

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means of paying for such policies and the items they cover.

[23] The Administration's promise to "assist in identifying issuers" of contraceptive-only policies (78 Fed. Reg. at 8463) does not, of course, ensure that there will be an economically viable market for such issuers.

[24] *See, e.g.*, NPRM Comments from the Self-Insurance Institute of America, Inc. (Feb. 25, 2013).

Even if all these assumptions were sound, which we question, the underlying approach would still pose a moral problem because *the group plan itself* continues to facilitate access to items and procedures to which the employer has a religious or moral objection. In other words, even if the objecting employer's monetary contributions did not directly pay for contraceptives and sterilization procedures, the plan itself would continue to function as a morally objectionable gateway or "ticket" to such coverage.[25] Thus, as described earlier in the context of insured plans, the self-insured plan (and the self-certification of non-coverage that the sponsor provides to the TPA) would automatically trigger contraceptive coverage. The moral dilemma for the plan sponsor with a religious or moral objection to such coverage lies in being forced to trigger the objectionable coverage *even if* the funds paying for

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[25] This is especially explicit in some of the proposed ways for making this intricate proposal function. For example, one scenario envisions that the employer's simple act of self-certifying that it objects to contraceptive coverage "would have the effect of designating the third party administrator as the plan administrator under section 3(16) of ERISA solely for the purpose of fulfilling the requirement that the plan provide contraceptive coverage without cost sharing." 78 Fed. Reg. at 8464. In other words, the plan sponsor's very act of stating its religious objection to this coverage is what gives the TPA the legal authority under ERISA to impose such coverage on all of the sponsor's employees and their dependents.

the group plan are not also used to pay for the contraceptive coverage.

The particular ways in which the proposed regulation calls on various parties to facilitate coverage to which they may have a religious or moral objection only deepens the dilemma. The sponsor must (1) identify a TPA able and willing to arrange the objectionable coverage; (2) provide the TPA with a certification that the group plan does not include the objectionable coverage; and (3) provide the TPA, as it usually does, with the names and identifying information of enrollees so the TPA can administer the plan, which in this case will include arranging for an individual contraceptive-only plan for those enrollees, the very thing that the sponsor objects to.[26]

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[26] The NPRM notes that, under one of three alternative proposals for self-insured plans, "there would be no obligation on a third party administrator to enter into or continue a third party administration contract with an eligible organization if the third party administrator were to object" to arranging for contraceptive-only coverage. 78 Fed. Reg. at 8464. Though not explicitly stated, this also appears to be equally true of the two other alternative proposals for self-insured plans. Obviously, if a TPA refuses for conscientious reasons to enter into or to continue a TPA contract with an eligible organization, that organization must find another TPA, specifically one that does not share its (or its previous TPA's) objection to contraceptive coverage. And the TPA that shares the employer's religious beliefs, in turn, is being told that it must either violate those beliefs or exit the marketplace. Indeed, some TPAs may

Again, our views on this are not new. We pointed out the problem of improperly facilitating contraceptive coverage when the idea of having TPAs arrange such coverage was first aired. *See* our comments of May 15, 2012, pp. 13-18. As we observed then, the problem relates not only to cooperation with what the plan sponsor views as immoral. Here, as in the case of insured plans, it is also an infringement of religious freedom for government to deprive stakeholders of the opportunity (which others continue to enjoy) to do what they regard as a necessary good—namely, to offer, buy, or enroll in a health plan that conforms to their most basic religious or moral convictions.[27] As we said in previous comments, protecting a religious organization from being forced to act immorally, by depriving it of the ability to act at all, is no way to serve religious freedom.

V *Conclusion.*

The proposed regulation keeps in place a regulatory definition of "preventive" health care which includes items that do not prevent disease, but rather are intended to render a woman temporarily or permanently infertile, and may be associated with

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themselves be religious organizations, but they receive no exemption under the proposed regulation.

[27] It is especially difficult to understand why the Administration would present many employers with the Hobson's choice of abandoning its conscientious beliefs or ceasing to offer a health plan at all, when one of ACA's central goals is to *improve* access to health plans.

adverse health outcomes. Under the proposed regulation, most stakeholders are offered no exemption or accommodation. The proposed regulation creates an exemption that artificially and arbitrarily carves up the religious community into those deemed "religious enough" for the exemption and those that are not, generally excluding those who practice their faith by most visibly serving the common good. Finally, under the proposed "accommodation" for non-exempt religious organizations, plan premiums or the plan, or both, would continue to serve as the source or conduit for the objectionable "services."

In short, the Administration continues to propose: (a) an unjust and unlawful mandate; (b) no exemption or "accommodation" at all for most stakeholders in the health insurance process, such as individual employees and for-profit employers; (c) an unreasonably and unlawfully narrow exemption for some nonprofit religious organizations, mostly houses of worship; and (d) an "accommodation" that still requires *bona fide* religious employers that fall outside the narrow government definition of "religious employer" to fund or facilitate the objectionable coverage.

Once again, we urge the Administration to reconsider this proposed course.

Respectfully submitted,

s/ *Anthony R. Picarello, Jr.*
Anthony R. Picarello, Jr.
Associate General

Secretary &
General Counsel

s/ *Michael F. Moses*
Michael F. Moses
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	:	**CIVIL ACTION NO. 13-1441**
Plaintiffs,	:	**Hon. Amy Berman Jackson**
v.	:	
KATHLEEN SEBELIUS, *et al.*,	:	**ELECTRONIC-ALLY FILED**
Defendants.	:	

AFFIDAVIT OF REVEREND CARTER GRIFFIN

I, Reverend Carter Griffin, pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of eighteen (18) and competent to make this declaration in support of Plaintiffs' Reply in Support of Their Motion for Preliminary Injunction, Opposition to Defendants' Motion to Dismiss, or, in the Alternative, for Summary Judgment, and Memorandum of Law in Support of Plaintiffs' Cross-Motion for Summary Judgment in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am a priest of the Archdiocese of Washington. I have a Doctorate in Theology. I serve as a theological advisor to Cardinal Donald Wuerl, Archbishop of Washington, on matters of Catholic

doctrine, including moral theology. I have advised the Cardinal on ecclesiastic and theological matters affecting the Archdiocese and entities and individuals within the Diocese.

3. I earned a bachelor of arts from Princeton University in 1994, served for four years as a line officer in the United States Navy, attended Mount St. Mary's Seminary in Emmitsburg, MD, for two years of philosophy, and attended the North American College in Rome for five years of theology. I was ordained to the priesthood in 2004, served as the personal assistant to the Archbishop of Washington for three years, and completed my doctoral studies in Rome at the University of the Holy Cross in 2010. I currently serve as the Vocations Director of the Archdiocese of Washington and the Vice-Rector of the Blessed John Paul II Seminary in Washington, D.C.

4. The Magisterium, which consists of the Pope and the College of Bishops in union with the Pope, decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church's mission in the world, including how that mission occurs within the settings of Catholic schools, agencies, and other institutions that claim Catholic identity. Cardinal Donald Wuerl is responsible for carrying out that mission in the Archdiocese of Washington and is, within the paramaters of Catholic teaching, the final arbiter of ecclesiastic matters in the Archdiocese.

5. The Cardinal has oversight over the administration of Plaintiffs Consortium of Catholic Academies of the Archdiocese of Washington ("CCA"),

Archbishop Carroll High School, Inc. ("ACHS), Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc. ("Don Bosco"), Mary of Nazareth Roman Catholic Elementary School, Inc. ("Mary of Nazareth"), Catholic Charities of the Archdiocese of Washington, Inc. ("Catholic Charities"), Victory Housing, Inc. ("Victory Housing"), and the Catholic Information Center, Inc. ("CIC"), as a corporate member and the chairman of the membership of each entities' corporation. The Cardinal has an obligation under canon law—Catholic Church law—to require that those entities adhere to Catholic doctrine.

6. In the Cardinal's role as a member of these organizations, he is ultimately responsible for requiring that policies adopted by the Board of Directors of those entities comply with Catholic doctrine.

7 In the Cardinal's role as final arbiter of ecclesiastic matters in the Archdiocese, he also decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church's mission in the Archdiocese.

8. Catholic religious teaching prohibits subsidizing, providing, and/or facilitating coverage for abortion-inducing products, sterilization services, contraceptives, and related counseling services in the manner required by the Mandate. These well-established religious beliefs flow from a unified system of beliefs articulated in the Catechism of the Catholic Church. One of the central tenets of this system is belief in the sanctity of human life and the dignity of all persons.

9. Thus, Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the "dignity of the human person is rooted in his creation in the image and likeness of God." *Catechism of the Catholic Church* ¶ 1700:

10. One consequence of belief in human life and dignity is Plaintiffs' well-established belief that "[h]uman life must be respected and protected absolutely from the moment of conception." *Id.* ¶ 2270. As a result, Plaintiffs believe that abortion is prohibited and that they cannot be complicit in the provision of abortions. *Id.* ¶¶ 2271 72.

11. Furthermore, Plaintiffs adhere to Catholic teachings that prohibit any action which intentionally "render[s] procreation impossible" and, more specifically, regard direct sterilization as "unacceptable." *Id.* ¶¶ 2370, 2399. Plaintiffs also believe that contraception is immoral.

12. Consistent with Church teachings regarding the sanctity of human life, the Archdiocesan health plan excludes coverage for abortion-inducing products, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

13. The regulations at issue in this lawsuit (the "Mandate"), require employers, on pain of substantial financial penalties or other negative consequences, to facilitate access to abortion-inducing products, sterilization services, contraceptives, and related counseling services through their employer health plan.

14. Plaintiffs have determined that the Mandate violates Catholic doctrine and that complying with

the Mandate would result in Plaintiffs impermissibly facilitating the provision of these objectionable products and services.

15. When Plaintiffs are prohibited from engaging in certain conduct, they are equally prohibited from designating or assisting someone else to do it for them. Here, Plaintiffs are themselves prohibited from providing the mandated coverage, and are equally prohibited from authorizing a third party administrator or insurance company to provide that coverage. Thus, the so-called "accommodation" does not resolve Plaintiffs' religious objection.

16. Under the accommodation, Plaintiffs must provide a "certification" to a third party administrator or insurance company setting forth their religious objections to this Mandate. The provision of this "certification" in turn, triggers an obligation on the part of the third party administrator or insurance company to provide or obtain the objectionable coverage for Plaintiffs' employees. In other words, Plaintiffs must find a third party willing to provide the mandated coverage, contract with that party, and subsequently authorize that party to provide the very products and services to which Plaintiffs object. Those products and services would be offered to Plaintiffs' employees only so long as they remain on Plaintiffs' health plans, and only by virtue of Plaintiffs' authorization of a third party to provide the coverage.

17. Plaintiffs' religious doctrine holds that participation in this scheme would constitute cooperation in a grave moral evil. Plaintiffs would never freely take such actions and should not be

forced to by a coercive government mandate in the first place. It would therefore violate Plaintiffs' religious beliefs to execute the self-certification and to take the steps outlined above.

18. Conversely, Plaintiffs are not forbidden from providing a salary to their employees, even if those employees may use the money to act contrary to Catholic doctrine. Such action does not constitute cooperation with a grave immoral act. For example, when the Archdiocese pays an employee's salary that the employee uses to purchase illegal drugs, the Archdiocese is not complicit in the employee's action because it has no concrete basis for expecting the salary to be used for that purpose—unlike the mechanism established by the accommodation, in which the payment made by the third-party administrator to the employee is specifically designated for a morally objectionable use.

19. Likewise, although Plaintiffs believe, as a matter of policy, that the federal government should not provide Plaintiffs' employees with the mandated products and services, government programs that provide such products and services without Plaintiffs' participation do not compel Plaintiffs to violate their religious beliefs.

20. As Catholic entities, Plaintiffs believe that they must bear witness, including in their deeds, to the beliefs of the Catholic Church and that it would be scandalous to act inconsistently with those beliefs. The Catholic Church teaches that health care is a human right flowing from the sanctity and dignity of human life. (*See* Blessed Pope John XXIII, *Pacem in Terris, Encyclical of Pope John XXIII, on*

Establishing Universal Peace in Truth, Justice, Charity, and Liberty, April 11, 1963). Plaintiffs bear witness to those teachings not only by word, but also by deed, including their actions regarding the provision of employee health insurance. Were Plaintiffs to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable services, Plaintiffs would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

21. Moreover, the Mandate artificially splits the Catholic Church in two, dividing an essential worship component from equally essential charitable and educational components, the former of which receives the exemption and the latter of which does not—preventing the Church from exercising supervisory authority over its constituent parts in a way that ensures compliance with Church teachings. Religious worship is an indispensable component of the Catholic faith, of course, but worship cannot be separated from providing the charitable and educational services that are also indispensable and integral components of the Catholic faith and are at the heart of the mission of Catholic Church. In other words, Plaintiffs exercise their Catholic faith both through worship and through acts of charity.

22. This integral component of the Catholic faith—caring for one's neighbor through acts of charity—began with the words of Jesus, "'Love the Lord your God with all your heart and with all your soul and with all your mind.' This is the first and greatest commandment. And the second is like it: 'Love your neighbor as yourself.'" (Gospel of Matthew 22:37-39). Since the time of Jesus, the Catholic Church has

taught love of neighbor through charitable service. This aspect of the faith, which connects love of neighbor, human dignity, and charitable service, lies at the heart of all Catholic social teachings, and has been reaffirmed over centuries through the Church's preaching of the Gospel and consistent social justice teaching as referenced in numerous papal encyclicals (*See* Gospel of Matthew 22:37-29 and 25:31-46; Blessed Pope John XXIII, *Pacem in Terris* (Peach on Earth) (1963); Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes* (Joy and Hope) (1966); Pope Paul VI, *Message to the International Conference on Human Rights, Teheran* (1968); Blessed Pope John Paul II, *Sollicitudo Rei Socialis* (On Social Concern) (1987), *Centesiumus Annus* (One Hundred Years of Catholic Social Teaching) (1991), and *Evangelium Vitae* (The Gospel of Life) (1995); Pope Emeritus Benedict XVI, *Deus Caritas Est* (God is Love) (2005). It is, therefore, a theological impossibility to separate the call to charitable service from the obligation to worship God. To assert that charitable service can be detached and isolated from worship of God is to deny a body of doctrine and tradition that persists throughout Christian history and which constitutes the Catholic faith.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Reverend Carter Griffin
Reverend Carter Griffin

STATE OF MARYLAND)
COUNTY OF CALVERT)
Sworn to and subscribed before me
this 25 day of October, 2013.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON., a corporation sole, *et al.*, **Plaintiffs** **v.** **KATHLEEN SEBELIUS, *et al.*,** **Defendants.**	CIVIL ACTION NO. 13-1441-ABJ

SUPPLEMENTAL AFFIDAVIT OF THE ARCHDIOCESE OF WASHINGTON

I, Jane G. Belford, being duly sworn, declare and state as follows;

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I serve as Chancellor of the Archdiocese of Washington (the "Archdiocese"). I have been so employed in this capacity since 2001.

3. As Chancellor, I am very familiar with the Archdiocese's mission and religious beliefs. I also am very familiar with the Archdiocese's self-insured health plan. The facts set forth herein are based upon my personal knowledge and information

available to me, and if I were called upon to testify to them, I could and would competently do so.

4. The Archdiocese has 1825 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require the Archdiocese to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to the Archdiocese's sincere religious beliefs. The Mandate forces the Archdiocese to either (1) sponsor a plan that will provide the employees of its non-exempt, affiliated ministries with access to "free" contraception, abortion-inducing products, sterilization, and related counseling, or (2) no longer extend its plan to these ministries, subjecting them to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage. The first option forces the Archdiocese to act contrary to its sincerely-held religious beliefs. The second option compels the Archdiocese to submit to the government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

6. I understand that the Government has argued it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate would still require

Catholic entities to act contrary to their sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide the entity's employees with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide the entity's employees or beneficiaries with payments for products and services that the entity cannot provide directly and that the third party administrator cannot provide unless it receives both the mandated authorization and related information about the entity's employees or beneficiaries. Catholic teaching, however, not only prohibits Catholic organizations from providing payments and/or coverage for abortion-inducing products, contraception, sterilization and related counseling, but also from providing a certification that authorizes a third-party administrator to do so even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

7. This is further exacerbated by the regulation that prohibits objecting organizations from "directly or indirectly, seek[ing] to interfere with a third party administrators arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, objecting organizations are barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party

administrator may *not* provide the objectionable payments and/or coverage to the organization's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

s/Jane G. Belford

STATE OF MARYLAND)
COUNTY OF ANNE ARUNDEL)

Sworn to and subscribed before me
this 12th day of November, 2013

s/ Mirna Rustrian-Plazza

MIRNA RUSTRIAN-PLAZZA
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
MY COMMISSION EXPIRES OCTOBER 17, 2016

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 13-1441-ABJ
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF THE CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC.

I, Marguerite Conley, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as the Executive Director of The Consortium of Catholic Academies of the Archdiocese of Washington, Inc ("CCA" or the "Consortium"). I have been in that position since June 2010.

3. I am very familiar with the Consortium's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. CCA has 89 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require CCA to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CCA's sincere religious beliefs..

6. Among other things, CCA's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CCA's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls—en CCA (or the Archdiocese, through whose plan CCA provides insurance) to locate and identity a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CCA's self- certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CCA's employees only for so long as they remain on CCA's plan, and CCA (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things,

identifying CCA's benefits-eligible employees for the third party administrator. Ultimately. under both the original and final versions of the Mandate, CCA is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7 I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires CCA to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide CCA's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide CCA's employees or beneficiaries with payments for products and services that CCA cannot provide directly and that the third party administrator cannot provide unless CCA submits both the mandated authorization and related information about CCA's employees. CCA's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of CCA's religious beliefs is further exacerbated by the regulation that prohibits CCA from "directly or indirectly, seek[ing] to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, CCA is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to CCA's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ Marguerite Conley
Marguerite Conley

STATE OF INSERT) Maryland
COUNTY OF) Anne Arundel
INSERT

Sworn to and subscribed before me this 12th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 13-1441 ABJ
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF ARCHBISHOP CARROLL HIGH SCHOOL

I, Mary Elizabeth Blaufuss, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as the President of Archbishop Carroll High School. ("ACHS"). I have been so employed since October 2012. Since 2006, I had been Vice-Principal for Academic Affairs at ACHS.

3. I am very familiar with ACHS's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal

knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. ACHS has 66 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require ACHS to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to ACHS's sincere religious beliefs.

6. Among other things, ACHS's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of ACHS's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on ACHS (or the Archdiocese, through whose plan ACHS provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is ACHS's self- certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to ACHS's employees only for so long as they remain on ACHS's plan, and ACHS (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying ACHS's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate,

ACHS is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7 I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires ACHS to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide ACHS's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide ACHS's employees or beneficiaries with payments for products and services that ACHS cannot provide directly and that the third party administrator cannot provide unless ACHS submits both the mandated authorization and related information about ACHS's employees. ACHS's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of ACHS's religious beliefs is further exacerbated by the regulation that prohibits ACHS from "directly or indirectly, seek[ing]

to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, ACHS is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to ACHS's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ Mary Elizabeth Blaufuss
Mary Elizabeth Blaufuss

STATE OF INSERT) Maryland
COUNTY OF) Anne Arundel
INSERT

Sworn to and subscribed before me this 12th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 13-1441 ABJ
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC.

I, Reverend Steve Shafran, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as President of Don Bosco Cristo Rey High School, Inc. I have been so employed since July 1, 2006.

3. I am very familiar with Don Bosco's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal

knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Don Bosco has 49 full-time equivalent employees. It is thus my understanding that it is not subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees. Since it does provide health insurance to its employees, however, my understanding is that it is required to provide coverage for abortion-inducing products, sterilization, contraception, and related counseling or pay a fine of $100 a day per affected beneficiary.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), thus require Don Bosco to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Don Bosco's sincere religious beliefs.

6. Among other things, Don Bosco's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Don Bosco's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Don Bosco (or the Archdiocese through whose plan Don Bosco provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Don Bosco's certification of its religious objection that authorizes provision of the mandated coverage. This

coverage will be made available to Don Bosco's employees only for so long as they remain on Don Bosco's plan, and Don Bosco (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by among other things, identifying Don Bosco's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Don Bosco is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its. employees with access to contraceptive benefits.

7 I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self..insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Don Bosco to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Don Bosco's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Don Bosco's employees or beneficiaries with payments for products and services that Don Bosco cannot provide directly and that the third party administrator not to provide unless Don Bosco submits both the mandated authorization and related information about Don Bosco's employees. Don Bosco's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling,

but also from providing a certification that authorizes a third-party administrator to do so-even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of Don Bosco's religious beliefs is further exacerbated by the regulation that prohibits Don Bosco from "directly or indirectly, seeking to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement. Don Bosco is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Don Bosco's employees or beneficiaries.

9. Furthermore, as I noted in my prior affidavit, potential liability for significant fines and uncertainty regarding Don Bosco's ability to offer and provide health benefits undermines Don Bosco's. ability to retain and recruit employees. Were Don Bosco to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate. Indeed, the failure to offer health insurance would be ruinous, as it would make it impossible to attract qualified faculty and staff.

FURTHER AFFIANT SAYETH NOT.

/s. Fr. Steve Shafran
Rev. Steve Shafran

STATE OF INSERT) Maryland
COUNTY OF INSERT) Anne Arundel

Sworn to and subscribed before me this 12th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 13-1441-ABJ
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC.

I, Michael Friel, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as Principal of Mary of Nazareth Roman Catholic Elementary School. I have been so employed since 2003.

3. I am very familiar with Mary of Nazareth's mission, religious beliefs, and health insurance policy The facts set forth herein are based upon my

personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Mary of Nazareth has 54.15 full-time equivalent employees (this includes 37 full-time employees and 17.15 full-time equivalents). It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require Mary of Nazareth to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Mary of Nazareth's sincere religious beliefs.

6. Among other things, Mary of Nazareth's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Mary of Nazareth's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Mary of Nazareth (or the Archdiocese, through whose plan Mary of Nazareth provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Mary of Nazareth's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Mary of Nazareth's employees only for so long as they remain on Mary of Nazareth's plan, and Mary of Nazareth

(or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying Mary of Nazareth's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Mary of Nazareth is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Mary of Nazareth to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Mary of Nazareth's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Mary of Nazareth's employees or beneficiaries with payments for products and services that Mary of Nazareth cannot provide directly and that the third party administrator cannot provide unless Mary of Nazareth submits both the mandated authorization and related information about Mary of Nazareth's employees. Mary of Nazareth's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a

certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of Mary of Nazareth's religious beliefs is further exacerbated by the regulation that prohibits Mary of Nazareth from "directly or indirectly, seek[ing] to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, Mary of Nazareth is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Mary of Nazareth's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ Michael J. Friel
Michael Friel

STATE OF INSERT) Maryland
COUNTY OF INSERT) Anne Arundel

Sworn to and subscribed before more this 12th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 13-1441-ABJ
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON

I, Rev. Msgr. John Enzler, being duly sworn, declare and state as follows:

I. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as the President and CEO at Catholic Charities of the Archdiocese of Washington, Inc. ("Catholic Charities"). I have been so employed since July 2011.

3. I am very familiar with Catholic Charities' mission, religious belief, and health insurance policy.

The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Catholic Charities has 687 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require Catholic Charities to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Catholic Charities' sincere religious belief.

6. Among other things, Catholic Charities' employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Catholic Charities' decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Catholic Charities (or the Archdiocese, through whose plan Catholic Charities provides insurance) to locate and identify a third patty willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Catholic Charities' self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Catholic Charities' employees only for so long as they remain on Catholic Charities' plan, and Catholic Charities

(or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying Catholic Charities' benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Catholic Charities is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Catholic Charities to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Catholic Charities' employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Catholic Charities' employees or beneficiaries with payments for products and services that Catholic Charities cannot provide directly and that the third party administrator cannot provide unless Catholic Charities submits both the mandated authorization and related information about Catholic Charities' employees. Catholic Charities' sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a

certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of Catholic Charities' religious beliefs is further exacerbated by the regulation that prohibits Catholic Charities from "directly or indirectly, seek[ing] to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any ,such arrangements." Under this latter requirement, Catholic Charities is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Catholic Charities' employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ John J. Enzler
Rev. Msgr. John Enzler

STATE OF INSERT)
COUNTY OF)
INSERT

Sworn to and subscribed before more this 11th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 13-1441 ABJ
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF VICTORY HOUSING, INC.

I, James A. Brown, Jr., being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as President of Victory Housing, Inc. I have been so employed since 1991.

3. I am very familiar with Victory Housing's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me,

and if I were called upon to testify to them, I could and would competently do so.

4. Victory Housing has 89 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require Victory Housing to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Victory Housing's sincere religious beliefs..

6 Among other things, Victory Housing's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Victory Housing's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Victory Housing (or the Archdiocese, through whose plan Victory Housing provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Victory Housing's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Victory Housing's employees only for so long as they remain on Victory Housing's plan, and Victory Housing (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying Victory Housing's benefits-eligible

employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Victory Housing is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Victory Housing to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Victory Housing's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Victory Housing's employees or beneficiaries with payments for products and services that Victory Housing cannot provide directly and that the third party administrator cannot provide unless Victory Housing submits both the mandated authorization and related information about Victory Housing's employees. Victory Housing's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has

the discretion not to provide such payments and/or coverage.

8. This forced violation of Victory Housing's religious beliefs is further exacerbated by the regulation that prohibits Victory Housing from "directly or indirectly, seek[ing] to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, Victory Housing is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Victory Housing's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ James A. Brown, Jr.
James A. Brown, Jr.

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

Sworn to and subscribed before more this 12th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 13-1441-ABJ
KATHLEEN SEBELIUS, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF CATHOLIC INFORMATION CENTER, INC.

I, Reverend Anne A. Panula being duly sworn declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Judgment and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as Director of the Catholic Information Center ("CIC"). I have been so employed since 2007

3. I am very familiar with CIC's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I

were called upon to testify to them, could and would competently do so.

4. CIC has 3 full-time employees. It is thus my understanding that it is not subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees. Since it does provide health insurance to its employees, however, my understanding is that it is required to provide coverage for abortion-inducing products, sterilization, contraception, and related counseling or pay a fine of $100 a day per affected beneficiary.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), thus require CIC to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CIC's sincere religious beliefs.

6. Among other things, CIC's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CIC's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on CIC (or the Archdiocese, through whose plan ere provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located perversely, it is CIC's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CIC's employees only for so long as they remain on CIC's plan, and ere (or the Archdiocese) will be forced to further facilitate access to the mandated coverage

by, among other things, identifying CIC's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, CIC is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires CIC to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide CIC's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide CIC's employees or beneficiaries with payments for products and services that CIC cannot provide directly and that the third party administrator cannot provide unless CIC submits both the mandated authorization and related, information about CIC's employees. CIC's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of CIC's religious beliefs is further exacerbated by the regulation that prohibits CIC from "directly or indirectly, seek[ing]to interfere with a third party administrator's arrangements to provide or arrange separate payments for. contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, CIC is barred from., for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to CIC's employees or beneficiaries.

9. Furthermore, as I noted in my prior affidavit, potential liability for significant fines and uncertainty regarding CIC's ability to offer and provide health benefits undermines CIC's ability to retain and recruit employ. Were CIC to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate. Indeed. the failure to offer health insurance would be ruinous, as it would make it Impossible to attract qualified staff.

FURTHER AFFIANT SAYETH NOT.

/s/ Anne Panula
Reverend Anne A. Panula

STATE OF INSERT) Maryland
COUNTY OF) Anne Arundel
INSERT

Sworn to and subscribed before more this 12th day of November, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, *et al.*, **Plaintiffs,** **v.** **KATHLEEN SEBELIUS, *et al.*,** **Defendants.**	CIVIL ACTON NO. 13-1441-ABJ

SUPPLEMENTAL AFFIDAVIT OF THE CATHOLIC UNIVERSITY OF AMERICA

I, Frank G. Persico, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the Chief of Staff and Vice President for University Relations at The Catholic University of America (hereinafter "CUA" or "University"). I have been so employed in this capacity, under different titles, since 2000 and have worked for the University in a variety of executive capacities, including as dean of students, executive director of alumni relations and associate dean of the university's law school since 1974.

3. As Chief of Staff and Vice President for University Relations, I am responsible for or aware of

most aspects of the University's day-to-day operations, I coordinate the senior staff, and personally advise the University president.

4. I am very familiar with CUA's mission, religious beliefs, and health insurance policies. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

5. CUA has 1,292 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

FURTHER AFFIANT SAYETH NOT.

s/Frank G. Persico
Frank G. Persico

s/Danielle M. Spinato
Danielle M. Spinato

Sworn to and subscribed before me
this 8th day of November 2013

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON., a corporation sole, *et al.*, **Plaintiffs** **v.** **KATHLEEN SEBELIUS, *et al.*,** **Defendants.**	CIVIL ACTION NO. 13-1441-ABJ

SUPPLEMENTAL AFFIDAVIT OF THOMAS AQUINAS COLLEGE

I, Peter L. DeLuca III, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am one of the founders of Thomas Aquinas College (hereinafter the "College"). I have taught at the College since the College opened in 1971 and have served in numerous executive capacities since then including Interim President and Vice President for Development. I am currently employed as Vice President for Finance and Administration and have served in this capacity since 1995. As a founder I am also a permanent member of the College's Board of

Governors, its governing body, and serve as the College's Secretary and Treasurer.

3. As Vice President for Finance and Administration, I am responsible for the College's day-to-day operations and financial affairs, I supervise the building construction program, and I personally advise the College's president.

4. I am very familiar with the College's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

5. The College has 77 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

6. The health plan the College offers to its employees is a self-insured health plan, but it is not recognized under the Employee Retirement Income Security Act as a "church plan."

FURTHER AFFIANT SAYETH NOT.

s/Peter L. DeLuca III
Peter L. DeLuca III

STATE OF CALIFORNIA)
COUNTY OF VENTURA)

Sworn to and subscribed before me
this 8th day of November, 2013.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, et al.,	:	
Plaintiffs,	:	Docket No.: CV 13-1441
vs.	:	Washington, DC
KATHLEEN SEBELIUS, et al.,	:	10:05 a.m., Friday
Defendants.	:	November 22, 2013
	X	

REPORTER'S OFFICIAL TRANSCRIPT OF MOTIONS HEARING BEFORE THE HONORABLE AMY BERMAN JACKSON UNITED STATES DISTRICT JUDGE

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Registered Professional Reporter
United States District Court
333 Constitution Avenue, NW
Washington, DC 20001
Proceedings reported by machine shorthand.
Transcript produced by computer-aided transcription.

* * *

[Page 9]

exercise within the meaning of RFRA. Plaintiffs are wrong for several reasons.

First, as the Court mentioned, the Archdiocese is exempt under the religious employer exemption. The remaining plaintiffs, it's not disputed, are eligible for the accommodation.

Now, seven of those additional plaintiffs are part of the Archdiocese's self-insured church plan, which means that their TPA isn't required to provide contraceptive coverage at all. And not only—so, therefore, not only is there no substantial burden, but there's also no Article III injury as to those plaintiffs.

As to the remaining two plaintiffs—

THE COURT: So are you saying that if these organizations get their health insurance through the church, that none of this applies to them? The

accommodation—nothing—doesn't apply to them and they are essentially exempt?

MR. PRUSKI: I wouldn't—not exactly. As to the plaintiffs that are on the Archdiocese self-insured church plan who don't qualify for religious employer exemption, they are still subject to the contraceptive coverage requirement.

Now, the defendants have made clear that they lack regulatory authority to require their TPAs to make the payments. However, the accommodation is still available to these plaintiffs, so they must still complete the self-certification requirement and once they do that, they have complied with the contraceptive coverage requirement. However, their TPA isn't required to provide the separate payments.

So to the extent they're claiming an injury based on facilitating access to contraceptive coverage, that injury simply doesn't exist here, and it certainly isn't a substantial burden on their religious exercise.

THE COURT: So the self-certification won't accomplish—won't inexorably lead, as they say, to the provision of coverage to their employees?

MR. PRUSKI: No. Their TPAs aren't required to make the payments. The regulations don't require their TPAs to do anything. However, the accommodation is still available to them, so they will have met—because the statutory requirement is still applicable to those seven plaintiffs.

THE COURT: But if they made the choice to self-insure otherwise, then that would be covered and then the next steps would flow?

MR. PRUSKI: If I understand Your Honor's question, you're asking if they left the Archdiocese's plan and self-insured otherwise, then, yes, then the accommodation would still be available to them, but if they completed the self-certification requirement and provide it to their TPA, their TPA would then be required to make the payments by the regulations.

THE COURT: Why didn't this come up in your first pleading in response to their motion for preliminary injunction when you moved to dismiss and moved for summary judgment yourself, that this didn't come up until two or three pleadings down the road?

MR. PRUSKI: Your Honor, it did come up in our reply brief, which was our second brief, and it wasn't —this issue wasn't raised in their complaint or in their brief, and I didn't notice it, frankly, in writing the opening brief. But we raised it as soon as I became aware of it when reading their statement of facts and then referring back to their affidavits.

Because the Court had consolidated with the merits, we were primarily responding to the arguments they made in the brief in the preliminary injunction, but we raised the issue as soon as we became aware of it. And that's been true in all of the similar cases like this.

THE COURT: All right. Well, let me ask you some foundational questions, because I really think what it is that these regulations actually do, as opposed to how the parties characterized the regulations, is— has to be the foundation for my ruling.

The regulations divide the eligible employers into two categories: Those insured under a group health

insurance plan, in which case, under the regulations, the coverage has to be expressly excluded from the plan, and then it's the insurer who becomes obligated to provide the services without passing the costs along in any way.

That much is correct.

MR. PRUSKI: Right.

THE COURT: Okay. Then there are those who are self-insured, in which case, it's the third-party administrator that's obligated to arrange for separate payments for the contraceptive services without any cost to the eligible organization.

So the third-party administrator's duty is triggered by his own agreement to contract with the religious organization, having been advised of the religious organization's objection, right?

MR. PRUSKI: I wouldn't put it in terms of an agreement to contract with. They're already in a relationship with the self-insured employer.

They are not required, upon receiving the self-certification, to make the payments. They can walk away from the relationship entirely. But if they remain in the relationship, then, yes, upon receiving the self-certification form, the third-party administrator—I'll just called them the TPA going forward—the TPA is then—becomes a plan administrator solely for the purpose of providing the separate payments, and it is the TPA's responsibility entirely to make those payments for contraceptive coverage. And as Your Honor referenced, the TPA is not permitted to charge, and in fact is expressly prohibited from charging the employer any premium or costs associated with those payments.

THE COURT: But his duty to do that only arises by virtue of the fact that he has a contract with the religious organizations?

MR. PRUSKI: Yes. They become a plan administrator and are required to make these payments by virtue of the fact that they receive the self-certification form from the employer.

THE COURT: All right. So if the regulations permit the—I've got "third-party administrator" written in my notes all over the place,

* * *

[Page 37]

monetary penalties, yes. But I mean, I think all I would say, again, is that we're not raising that particular argument that the Court is articulating.

THE COURT: All right. Well, we've talked about this at the micro level, but I want to step back and just look at the big picture for a second.

If the whole purpose behind the mandate is to facilitate greater access to preventive services for all the many good reasons you enumerate, how do you respond to plaintiffs' argument, then, that this regulation forces them to facilitate access to contraception, and, thereby, it compels them to do something that their religion forbids? Have you really cut them out of the process completely with this accommodation?

MR. PRUSKI: Well, we understand the plaintiffs believe that participating in the accommodation requires facilitation of contraceptive coverage and that that's a violation of their religious beliefs. We

don't question that. We're not asking Your Honor to question that either.

But courts, nevertheless, have an obligation in determining whether there's a substantial burden to look at the way the law operates in practice from an objective perspective, and a case like *Kaemmerling* or

* * *

[Page 104]

effort that the government has made to substantially accommodate religious organizations.

We have not raised the argument that Your Honor is suggesting in our briefs. I don't think the Court is necessarily precluded from making that determination.

In our reply brief, the government did note that we were not advancing the compelling interest and restrictive means arguments that we had raised earlier in light of *Gilardi*, and we want to preserve those arguments, of course.

THE COURT: Well, I guess my question to you is: Everyone has said that with respect to the burden and whether it governs or not, *Gilardi* is limited to the facts that were before *Gilardi*.

Why isn't that true with respect to where we are now?

MR. PRUSKI: May I take one moment, Your Honor?

THE COURT: Yes.

(Discussion held off the record.)

MR. PRUSKI: So, Your Honor, I think we would have to concede that, as to compelling interests, that

the *Gilardi* opinion does reject the arguments that we've made in this case. And, again, we want to preserve them. We don't agree with the *Gilardi* decision, of course, but as things stand in the circuit right now, we think that our compelling interests arguments are foreclosed by *Gilardi.*

THE COURT: And it has to be compelling interests and narrowly tailored?

MR. PRUSKI: Yes. It's not an either/or, correct.

THE COURT: All right.

I think those are really the questions I had for you. If you have anything else that you want to say in response to their argument, briefly...

MR. PRUSKI: Thank you, Your Honor.

The one very brief point which Your Honor asked about whether motive is relevant to the neutrality and general applicability analysis, and Mr. Francisco cited the *Lukumi* case.

Actually, the *Lukumi* case suggests actually the opposite. Only two members of the Court signed on the section of opinion that goes into looking at motive, so I just wanted to make that clear to the Court.

If there are no further questions, thank you, Your Honor.

THE COURT: I don't think so. I'm going to

* * *

ARCHDIOCESE OF WASHINGTON

Archdiocesan Pastoral Center, 5001 Eastern Avenue, Hyattsville, MD 20782-3447
Mailing Address: Post Office Box 29260, Washington, DC 20017-0260
301-853-4560 TDD 301-853-5300

Submitted Electronically

April 4, 2013

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking on Preventive Services File Code No. CMS-9968-P

Dear Sir or Madam:

The Archdiocese of Washington (the "Archdiocese") respectfully submits the following comments on the Notice of Proposed Rulemaking ("NPRM") on preventive services. 78 Fed. Reg. 8456 (Feb. 6, 2013). The Archdiocese is the local arm of the Roman Catholic Church in Washington, D.C., and five counties in Maryland: Montgomery, Prince George's, Calvert, Charles, and St. Mary's. The Archdiocese serves a religious community of Roman Catholics under the leadership of Cardinal Donald Wuerl and provides a wide range of spiritual, educational, and social services to residents in the greater Washington, D.C., community, Catholic and non-Catholic alike. The Archdiocese not only provides

pastoral care and spiritual guidance for nearly 600,000 Catholics, but also serves individuals throughout the D.C. area through its schools and multiple charitable programs.

The Archdiocese has long expressed its concern that the regulations at issue here (the "Mandate"), which require the provision of insurance coverage for abortion-inducing drugs, contraception, sterilization, and related education and counseling, force faithful Catholics to choose between facilitating services and speech that violate their religious beliefs or exposing their organizations to devastating penalties. Indeed, the Archdiocese itself has filed a lawsuit challenging the Mandate, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 12-cv-0815, 2013 WL 285599 (D.D.C. Jan. 25, 2013), and has previously commented on prior iterations of that regulation, *see, e.g.*, Comments of Archdiocese of Washington (Sept. 30, 2011), *available at http://www.dol.gov/ebsa/pdf/1210-AB44a-14694.pdf.*

Regrettably, the proposals contained in the NPRM fail to resolve the serious religious liberty issues presented by the Mandate. The NPRM does not expand the scope of the "religious employer" exemption in any meaningful way. The so-called "accommodation" for nonexempt religious organizations is an accounting maneuver that likewise effects no substantive change to existing law. And the NPRM actually removes an existing, important protection that allows a "religious employer" to include within its insurance plan affiliated religious organizations with which the employer "shares common religious bonds and

convictions." Consequently, the proposals in the NPRM are, in fact, demonstrably worse than the regulations that they are intended to replace. Moreover, as a practical matter, the NPRM creates insurmountable administrative and logistical difficulties for organizations, such as the Archdiocese and its affiliates, that operate or participate in large self-insured plans that provide coverage for multiple affiliated employers.

Accordingly, the Archdiocese continues to strenuously oppose the Mandate, including the proposed changes set forth in the NPRM. Instead, the Archdiocese urges the Government to (1) adopt a definition of "religious employer" that recognizes that religious organizations do far more than operate "houses of worship"; and (2) abandon its proposal to rescind the ability of "religious employers" to include affiliated religious organizations in their insurance plans and thereby shield them from the Mandate.

I. THE NPRM INCREASES THE BURDEN THAT THE MANDATE IMPOSES ON RELIGIOUS LIBERTY

The NPRM does not offer any meaningful relief to religious organizations, like the Archdiocese's affiliates, that are morally opposed to providing, paying for, and/or facilitating access to abortion-inducing drugs, contraception, sterilization, and related education and counseling. First, the NPRM fails to expand, in any meaningful way, the scope of the "religious employer" exemption. Second, the so-called "accommodation" likewise offers no relief of substance; it still requires religious organizations to provide, pay for, and/or facilitate access to

objectionable products and services. Third, the NPRM proposes to reverse existing law in a way that substantially *narrows* the number of religious entities who may seek shelter under the already impermissibly cramped definition of "religious employer," and, therefore, is significantly *worse* than existing law. Each of these issues is explained in greater detail below.

A. The changes to the "religious employer" exemption provide little, if any, substantive relief to Catholic social service organizations.

The NPRM first proposes a revised definition of "religious employer" that would be used to determine which entities would be completely exempt from compliance with the Mandate. Currently, the religious employer definition exempts organizations that meet four criteria: "(1) The inculcation of religious values is the purpose of the organization"; "(2) The organization primarily employs persons who share the religious tenets of the organization"; "(3) The organization serves primarily persons who share the religious tenets of the organization"; and "(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 45 C.F.R. § 147.130(a)(iv)(B). The NPRM would eliminate the first three prongs of this definition. Consequently, under the NPRM, an exempt "religious employer" would be "a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." *See* 78 Fed. Reg. at 8461.

This proposed modification does not, nor is it intended to, accomplish any significant change to the scope of existing law. Indeed, the NPRM candidly admits as much, conceding that this change "would *not* expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." *See id.* (emphasis added). Instead, this proposal would continue to "restrict[]the exemption primarily to group health plans established or maintained by churches, synagogues, mosques, and other houses of worship, and religious orders." *Id.* In this respect, the NPRM is little different from the existing "religious employer" exemption, which was intended to focus on "the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. 46,621, 46,623 (Aug. 3, 2011). Religious organizations that have a broader mission are still not, in the Government's view, "religious employers."

Practically speaking, this cramped definition of religious employer would continue to exclude numerous organizations, such as Catholic hospitals, charitable organizations, universities, and elementary and secondary schools that are indisputably religious. While these revisions may ensure that the Archdiocese itself would be exempt from the Mandate, the NPRM offers no such guarantee to many of the distinct diocesan corporations the Archdiocese has established to carry out its ministries. Indeed, the decision to exempt the Archdiocese, but not all of its ministries, flows from a fundamentally misguided view of religious liberty. Freedom of religion means far more than the freedom to worship, and religious exercise is not confined

within the four walls of a parish church. As Pope Benedict explained, "[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." Pope Benedict XVI, Deus Caritas Est ¶ 22 (2006). Ignoring this reality, the NPRM persists in separating the Archdiocese from the ministries it has established to care for the "widows[,] orphans, prisoners, and the sick and needy of every kind," awarding an exemption to the former, but not to the latter. The Catholic organizations that carry out the Church's charitable mission, however, are no less "religious" than the Archdiocese itself.

Finally, it makes no sense for the NPRM to adopt Section 6033 as the dividing line between organizations that are, or are not, deemed sufficiently "religious" to warrant exemption from the Mandate. Section 6033 was never intended to distinguish among religious organizations for purposes of the provision of health care. Instead, it merely addresses whether and when nonprofit entities that are exempt from paying taxes under the Code must file an annual informational tax return, known as a Form 990. 26 C.F.R. § 1.6033-2(a). The choice of this provision is all the more puzzling since there are myriad provisions in federal law that, unlike Section 6033, are intended to protect religious freedom. *See, e.g.*, 42 U.S.C. § 300a-7 (protecting hospitals and individuals that receive federal funds in various health programs from participating in abortion and sterilization procedures if such participation is

"contrary to [their] religious beliefs or moral convictions"); 29 U.S.C. § 1002(33) (defining "church plans"). The decision to adopt Section 6033, rather than these other provisions, seems to be based solely upon a desire to define a "religious employer" as narrowly as possible and thereby force objecting religious organizations to abandon sincerely held religious beliefs with which the Government disagrees. This would be unconscionable in almost any context. It is particularly so where, as here, the regulations target religious organizations precisely because their religious mission includes charitable outreach that extends beyond the four walls of their "houses of worship."

B. The proposed "accommodation" is an accounting maneuver that still requires religious organizations to provide, pay for, and/or facilitate access to contraception, abortion-inducing drugs, sterilization, and related education and counseling.

The NPRM also proposes an "accommodation" for nonexempt objecting religious nonprofit organizations that do not qualify as "religious employers." Under that proposal—which largely parrots the prior and inadequate proposal contained in the Advance Notice of Proposed Rulemaking ("ANPRM"), 77 Fed. Reg. 16,501 (Mar. 21, 2012)—a nonexempt, nonprofit religious entity (deemed an "eligible organization") that objects to providing the mandated coverage as part of its group health plan must self-certify its objection to contraceptive coverage. The self-certification then "automatically" requires a third-party entity—either the nonprofit's

insurance company or its third-party administrator ("TPA")—to provide or procure the objectionable coverage "at no additional cost." *See* 78 Fed. Reg. at 8462–64. Coverage is automatic; female employees and employees with female dependents do not have the option to reject it.

This so-called "accommodation" is an accounting maneuver that, like the cosmetic changes to the "religious employer" definition, offers no meaningful relief to religious organizations opposed to the Mandate. Like existing law, the "accommodation" still requires Catholic organizations to provide, pay for, and/or facilitate access to the objectionable services. The following example illustrates this point:

- Under the Mandate as it now exists, a Catholic organization contracts with an insurance company, and the insurance company must provide the Catholic organization's employees with an insurance policy that covers contraception, abortion-inducing drugs, sterilization, and related counseling.
- Under the NPRM, a Catholic organization contracts with an insurance company, and the insurance company must provide the Catholic organization's employees with two different insurance policies, simultaneously: one that does not cover contraception, abortion-inducing drugs, sterilization, and related counseling, and one that does.

There is no material difference between these two scenarios. In both instances, the Catholic organization's contract with the insurance company

automatically results in insurance coverage for the objectionable services. The fact that, as an accounting matter, the coverage comes in two policies rather than one does not solve the moral problem.

Thus, the Government's assurances that the objecting employer's premiums will not flow to the payment of contraceptives are irrelevant; either way, the Catholic organization's contract with the insurance company triggers the provision of objectionable insurance coverage. These assurances are, in any event, implausible in at least two respects.

First, according to the NPRM, the provision of contraceptive coverage will be "at least cost neutral" for insurance companies, because insurers will "experience lower costs from improvements in women's health and fewer childbirths." 78 Fed. Reg. at 8463. This, the NPRM claims, will allow insurance companies to offer contraceptive coverage at "no *additional* cost" to employers. *Id.* (emphasis added).[1] In other words, insurance companies will

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[1] The source cited by the NPRM contains similar language. *See* John Bertko et al., *The Cost of Covering Contraceptives Through Health Insurance* (February 9, 2012) ("[A]vailable data indicate that providing contraceptive coverage as part of a health insurance benefit *does not add* to the cost of providing insurance coverage." (emphasis added)), *available* at http://aspe.hhs.gov/health/reports/2012/contraceptives/ib.shtml; *id.* (stating that in one instance, "there was no need to adjust premium levels because *there was no cost increase* as a result of providing coverage

not have to charge employers more to provide contraceptive coverage. Presumably, their premiums will remain the same. But this means that even granting the NPRM's assumptions about contraceptive coverage being cost neutral—which, as discussed immediately below, are themselves implausible—the "accommodation" is nothing more than a shell game. Premiums previously paid by the objecting employers to cover, for example, "childbirths," will now be redirected to pay for contraceptive coverage.[2] Thus, not only would an objecting employer *trigger* the coverage of contraceptive services by providing a health plan, but the employer would also actually be *paying* for such services.

Second, industry experts have expressed deep "skeptic[ism]" that it will be "cost neutral for insured plans to bear the cost of contraceptive coverage."[3]

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of contraceptive services" (emphasis added)); *id.* (indicating that in another instance a "mandate did not appear to increase insurance costs" (emphasis added)).

[2] The NPRM also suggests that providing contraceptive coverage "may result in cost-savings." 78 Fed. Reg. at 8463. But there is certainly no guarantee that will take place, nor does there appear to be any requirement that insurance companies lower premiums for religious objectors should such savings be realized.

[3] *Insurers May Incur Significant Costs from Proposal on Contraceptive Benefit Opt-Out*, AIS's Health Reform Week, Feb. 11, 2013, at 1.

Creating "'individual policies for contraceptive coverage would be a significant undertaking,'" involving "administrative hassles such as setting up and getting state approval for new individual insurance products" and potentially "'significant'" costs in providing notice to eligible employees.[4] In some cases, the creation of these "individual polic[ies] covering only one service" would conflict with state law [5] Simply put, "insurers aren't going to give away such coverage for free," and may well "raise the premium for the religious employer opting out of coverage" without including a "separate line item on the bill."[6] Consequently, the assumption that the addition of contraceptive coverage will be cost-neutral is implausible.

The proposal for self-insured entities, while more opaque, appears to be similarly troubling. It is, of course, difficult to comment meaningfully on this proposal, since the NPRM has not articulated any specific regulatory language; instead, it has merely describes several "alternative approaches" under "consider[ation]." 78 Fed. Reg. at 8463. "[U]nder all approaches," however, employers would be required to self-certify their religious objection to their third party administrator, who would then "automatically arrange separate individual health insurance policies for contraceptive coverage from an [insurance company] providing such polices." *Id.* All related costs would allegedly be offset by fee adjustments

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[4] *Id.*

[5] *Id.*

[6] *Id.* at 2.

from Federally Facilitated Exchanges. *Id.*[7] It is doubtful that the administrative "offsets" would, in fact, fully compensate the TPAs, in which case it is likely that the costs would be passed back to the employer. In addition, it is again the employer's provision of health insurance in the first place that triggers the TPA's obligation to procure the objectionable coverage.[8] Finally, the NPRM does not

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[7] "Under the first approach [described in the NPRM], a third party administrator receiving the copy of the self-certification would have *an economic incentive to voluntarily* arrange for the separate individual health insurance policies for contraceptive coverage for plan participants and beneficiaries because it would be compensated for a reasonable charge for automatically arranging for the contraceptive coverage through payment by the issuer of the contraceptive coverage." 78 Fed. Reg. at 8463–64 (emphasis added). This language seems to suggest that a TPA would "voluntarily" arrange contraceptive coverage because it would have an "economic incentive" to do so. *Id.* This appears to be in tension with other portions of the NPRM that states that "under all approaches" a TPA would "automatically" arrange separate coverage. *Id.* at 8463. It is therefore unclear what, exactly, the Government's "first approach" entails.

[8] *See* Comments of the U.S. Conference of Catholic Bishops at 22 (Mar. 20, 2013), *available at http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf* ("The moral dilemma for the plan sponsor with a religious or moral objection

address how it would work if the TPA is, itself, a religious organization that objects to providing the mandated coverage.

In short, the NPRM's division between "religious employers," who are exempt from the Mandate, and other equally religious organizations, who are subject to the so-called "accommodation," is no solution at all to the Mandate's infringement on religious liberty. The Government's attempt to drive a wedge between these religious organizations, moreover, is all the more objectionable given the Government's stated purpose for doing so. According to the NPRM, the Government drew a distinction between "religious employers" and organizations that are eligible for the "accommodation" based on a belief that "the participants and beneficiaries [of eligible organizations' plans] may be less likely than participants and beneficiaries in group health plans established or maintained by religious employers to share [the] religious objections of the eligible organizations." 78 Fed. Reg. at 8461–62. It cannot be, however, that an organization's religious freedom turns on the beliefs of its employees. It is, after all, the religious organization's beliefs that are protected by the Religious Freedom Restoration Act ("RFRA") and the First Amendment; the organization's employees have no corollary right to force the religious organization to subsidize the employees' contrary beliefs. Nor can it be that the Government

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to such coverage lies in being forced to trigger the objectionable coverage even if the funds paying for the group plan are not also used to pay for the contraceptive coverage.").

is permitted to parcel out the protections of RFRA and the First Amendment based on its speculation about whether an organization's employees are more or less likely to be devout believers. Consequently, the so-called "accommodation" does not alleviate the burden that the Mandate imposes on religious freedom.

Finally, it is unclear whether the agencies even have the statutory authority to promulgate the accommodation. The statute states that "group health plan[s]" must provide coverage for "preventive care." 42 U.S.C. § 300gg-13(a)(4). It is, therefore, unclear whether, once "preventive care" is defined to include contraception, the so-called "accommodation" can require that contraception be provided separate and apart from the group plans in which plan participants are enrolled. In addition, it is unclear how the statute could be construed as authorizing the agencies to force group-plan insurers to provide contraception completely free of charge. The statute provides that preventive-care coverage must be provided without "cost sharing requirements," *id.*, but the accommodation goes much further, requiring contraception to be provided "without cost sharing, *premium, fee, or other charge* to plan participants and beneficiaries." 78 Fed. Reg. at 8462 (emphasis added). The authority for this sweeping prohibition on all premiums, fees, or other charges is not apparent.

C. The NPRM actually makes the problem worse by eliminating an important protection that Catholic organizations previously had under existing law.

Not only does the NPRM propose a "solution" that does not alleviate religious objectors' core concerns, but in at least one significant respect, it would actually make their situation even worse than existing law. In the ANPRM, the Government acknowledged that the religious employer exemption was "available to religious employers in a variety of arrangements." 77 Fed. Reg. at 16,502. It specifically stated that a nonexempt entity could thus "provide[] health coverage for its employees through" a plan offered by a separate, "affiliated" organization that is a "distinct common-law employer." *Id.* And in that situation, if the "affiliated" organization was "exempt from the requirement to cover contraceptive services, then neither the [affiliated organization] nor the [nonexempt entity would be] required to offer contraceptive coverage to its employees." *Id.*

For example, the Archdiocese operates a self-insurance plan that covers not only the Archdiocese itself, but numerous other affiliated Catholic organizations—including Archbishop Carroll High School, Inc., the Consortium of Catholic Academies of the Archdiocese of Washington, Inc. (the "Consortium"), Catholic Charities of the Archdiocese of Washington, Inc. ("Catholic Charities"), and dozens of additional Catholic organizations. Under the existing religious employer exemption, if the Archdiocese is an exempt "religious employer," then these other Catholic organizations get the benefit of that exemption, regardless of whether they independently qualify as "religious employers," so long as they continue to participate in the Archdiocese's exempt plan. These affiliated religious organizations, therefore, could benefit from the

Archdiocese's exemption even if they, themselves, could not meet the NPRM's unprecedentedly narrow definition of "religious employer."

The NPRM proposes to *eliminate* this protection. It provides that "each employer would have to independently meet the definition of eligible organization or religious employer in order to take advantage of the accommodation or the religious employer exemption with respect to its employees and their covered dependents." *See* 78 Fed. Reg. at 8467. Thus, if, as the NPRM suggests, the Archdiocese is an exempt "religious employer," Catholic Charities, Archbishop Carroll High School, and the Consortium of Catholic Academies would be unable to obtain the benefit of the exemption simply by participating in the archdiocesan plan. Instead, unless they independently qualify as "religious employers," under the NPRM, they would be forced to facilitate access to contraceptives, abortion-inducing drugs, sterilization, and related education and counseling, contrary to their sincerely held religious beliefs. In this respect, the NPRM is significantly *worse* than existing law. Moreover, as explained further below, this proposal drives a wedge between the various entities that comprise the Catholic Church and, in so doing, poses insurmountable administrative challenges for the Archdiocese's self-insured church health plan. *See infra* Part III.

D. Catholic private employers and business owners do not even get the benefit of the illusory "accommodation."

The NPRM also fails to address the concern that the Mandate includes no conscience protection at all

for individuals seeking to live in accordance with their faith. Private employers continue to be denied their right to make decisions that reflect their religious beliefs. Numerous courts have correctly recognized that this infringes on the religious freedom of these individuals. Indeed, many have awarded preliminary relief to private employers challenging the Mandate. *See, e.g., Gilardi v. U.S. Dep't of Health & Human Servs.*, No. 13-5069 (D.C. Cir. Mar. 29, 2013) (Dkt. # 24) (granting injunction pending appeal); *Annex Med., Inc. v. Sebelius*, No. 13-1118, 2013 U.S. App. LEXIS 2497 (8th Cir. Feb. 1, 2013) (same); *Grote v. Sebelius*, No. 13-1077, 2013 WL 362725 (7th Cir. Jan. 30, 2013) (same); *Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353 (7th Cir. Dec. 28, 2012) (same); *O'Brien v. U.S. Dep't of Health & Human Servs.*, No: 12-3357 (8th Cir. Nov. 28, 2012) (granting stay pending appeal); *Hall v. Sebelius*, No. 13-00295 (D. Minn. Apr. 2, 2013) (Dkt. # 12) (granting preliminary injunction); *Bick Holdings Inc. v. U.S. Dep't of Health & Human Servs.*, No. 4:13-cv-00462 (E.D. Mo. Apr. 1, 2013) (Dkt. # 21) (same); *Lindsay v. U.S. Dep't of Health & Human Servs.*, No. 13-1210 (N.D. Ill. Mar. 20, 2013) (same); *Monaghan v. Sebelius*, No. 12-15488, 2013 WL 1014026 (E.D. Mich. Mar. 14, 2013) (same); *Sioux Chief Mfg. Co. v. Sebelius*, No. 13-0036-CV-W-ODS (W.D. Mo. Feb. 28, 2013) (same); *Triune Health Group v. U.S. Dep't of Health & Human Servs.*, No. 12 C 6756 (N.D. Ill. Jan. 3, 2013) (same); *Sharpe Holdings v. U.S. Dep't of Health & Human Servs.*, No. 2:12-CV-92-DDN, 2012 WL 6738489 (E.D. Mo. Dec. 31, 2012) (granting temporary restraining order); *Am. Pulverizer Co. v. U.S. Dep't of Health &*

Human Servs., No. 12-3459-CV-S-RED, 2012 WL 6951316 (W.D. Mo. Dec. 20, 2012) (granting preliminary injunction); *Legatus v. Sebelius*, No. 12-12061, 2012 WL 5359630 (E.D. Mich. Oct. 31, 2012) (same); *Newland v. Sebelius*, 881 F Supp. 2d 1287 (D. Colo. 2012) (same).

II. THE MANDATE, INCLUDING THE NPRM, CONSTITUTES AN UNCONSTITUTIONAL AND ILLEGAL INFRINGEMENT ON RELIGIOUS FREEDOM

As the proposals contained in the NPRM do not resolve the religious liberty issues presented by the Mandate, implementation of the NPRM is unlikely to resolve the lawsuits that Catholic and other organizations have filed across the country. As these lawsuits allege, the Mandate violates RFRA, the First Amendment, the Administrative Procedure Act ("APA"), and other federal statute.[9] To date,

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[9] *See, e.g.*, Compl., *Roman Catholic Archbishop of Washington v. Sebelius*, No. 12-cv-0815 (D.D.C. May 21, 2012) (Dkt. # 1), attached as Exhibit A. The arguments set out in the Complaint are incorporated herein by reference. The proposals in the NPRM are illegal for many of the same grounds asserted therein, including but not limited to the fact that these proposals: (1) violate the Free Exercise Clause, *id.* ¶¶ 194–232; (2) violate the Establishment Clause, *id.* ¶¶ 213–32; (3) violate RFRA, *id.* ¶¶ 177–93; (4) impermissibly interfere with internal church governance, *id.* ¶¶ 233–47; (5) violate the Speech Clause, *id.* ¶¶ 248–61; (4) violate the APA, *id.* ¶¶ 262–305; and (5) violate the Weldon Amendment,

numerous courts have held that the current form of the Mandate likely violates RFRA in challenges brought by for-profit companies. *See supra* p. 8 (citing cases). For the reasons discussed below, the same reasoning applies to the Mandate even if revised as proposed in the NPRM.

RFRA prohibits the Government from "substantially burden[ing] a person's exercise of religion" unless the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)–(b). In order to determine whether a substantial burden exists, courts must (1) identify the religious exercise at issue, and (2) determine whether the government has placed "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 718 (1981). In identifying the relevant exercise of religion, a court must accept the "line" drawn by plaintiffs as to the nature and scope of their religious beliefs. *Id.* at 715. After plaintiffs' beliefs have been identified, the court must then determine whether the challenged regulation substantially pressures plaintiffs to violate those beliefs.

Significantly, RFRA protects "*any* exercise of religion, whether or not compelled by, or central to, a

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Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011), as well as the Affordable Care Act itself, 42 U.S.C. § 18118(c); *see also* Compl. ¶¶ 291–305.

system of religious belief." 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A) (emphasis added). It is therefore irrelevant whether the religious objection is to the direct funding of contraceptive services under current law or to the funding and facilitation of those services as contemplated by the NPRM. The refusal to take either action is a protected exercise of religion for purposes of RFRA. *See supra* p. 8 (citing cases).

Thus, if the NPRM were implemented, there would be little, if any, change in the RFRA calculus. If an organization's religious beliefs forbid it from compliance with the Mandate as modified by the NPRM, the question for a federal court would simply be whether the Mandate places substantial pressure on that organization to violate its religious beliefs. As numerous courts have found, putting organizations to the choice of breaching their faith or paying the substantial penalties imposed by the Mandate is the epitome of a substantial burden. Moreover, these courts have likewise concluded that this burden cannot be justified by a compelling interest, nor is the Mandate the least restrictive means to achieve the Government's stated ends. *See supra* p. 8 (citing cases).

Therefore, unless the NPRM is changed significantly before implementation, it, like the current Mandate, would violate RFRA (as well as the First Amendment, the APA, and other federal statutes).

III. THE NPRM'S PROPOSALS FOR SELF-INSURED ENTITIES ARE UNWORKABLE

As discussed above, in at least one significant respect, the NPRM actually makes the problem worse

for entities, such as the Archdiocese and its affiliates, that operate or participate in large self-insured plans that provide coverage for multiple affiliated religious employers. *See supra* Part I.C. Previously, affiliated religious organizations that did not independently qualify as "religious employers" could nonetheless obtain the benefit of the exemption through their participation in a plan sponsored by an exempt "religious employer." The NPRM, however, would rescind this protection, proposing instead that "each employer [participating in the group plan] would have to independently meet the definition of religious employer in order to take advantage of the religious employer exemption with respect to its employees and their covered dependents." 78 Fed. Reg. at 8467. Thus, although the Catholic organizations currently participating in the Archdiocese's self-insured health plan all share common religious bonds and convictions with the Archdiocese, the NPRM would require each of them to separately qualify for the "religious employer" exemption.

This requirement, however, is completely unworkable. Perhaps more importantly, it is based on a fundamentally flawed understanding of religious liberty that fails to acknowledge the varied means by which the Catholic Church carries out its mission. In practical effect, it would deny the benefits of the religious employer organization and self-insurance to indisputably religious entities and prevent the Archdiocese from ensuring that all of its affiliated religious corporations remain faithful to Catholic teaching.

A. The NPRM is administratively unworkable.

The NPRM's proposals are completely unworkable for self-insured entities like the Archdiocese. Indeed, in all likelihood, the Archdiocese's self-insured group health plan will not be able to exist and operate as it does today under the changes that would be required by the NPRM. Thus, contrary to President Obama's repeated assurances that "if you like your plan, you can keep it,"[10] if the Mandate remains unchanged, many participants in the Archdiocese's self-insurance plan will *not* be able to retain their existing insurance plan.

The Archdiocese maintains a Catholic self-insured health plan for its own and for other Catholic organizations' eligible employees. The Archdiocese chooses to self-insure so that it can customize its plan to meet the healthcare needs of its employees consistent with the teachings of the Catholic faith. In addition, since it operates in two jurisdictions, self-insuring allows the Archdiocese to avoid the conflicting state health insurance regulations and mandates of D.C. and Maryland. The Archdiocese sponsors the group health plan, effectively making the Archdiocese the insurer for its employees and

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[10] Press Release, U.S. Dep't of Health & Human Servs., U.S. Departments of Health and Human Services, Labor, and Treasury Issue Regulation on "Grandfathered" Health Plans Under the Affordable Care Act (June 14, 2010), *available at http://www.hhs.gov/news/press/2010pres/06/20100614e.html.*

those of its affiliated organizations. The Archdiocese is solely liable for payment of all benefits provided to its participants under the plan. For practical purposes of administering the plan and handling claims, the Archdiocese contracts with National Capital Administrative Services, LLC ("NCAS"). NCAS is a third party administrator that administers participating employees' claims and provides access to the CareFirst BlueCross BlueShield provider network of doctors.

Among the associated Church entities that participate in the Archdiocese's health plan are archdiocesan parishes and schools, as well as Catholic organizations that are associated with the Archdiocese. Included among these entities are separately incorporated educational, health care, and social service ministries of the Archdiocese.

All of the entities in the Archdiocese's health plan share common Catholic religious bonds and convictions that are central to their operating principles. Their Catholic identity and communion with the Church are established in their governing documents and in their listing in the Official Catholic Directory. Recognizing the ecclesial authority of the Church, archdiocesan affiliated corporations reserve certain powers in their corporate members, which in all cases include the Archbishop, the Moderator of the Curia (a canonical position reserved for clergy), and the Chancellor (a canonical position that may be filled by either clergy or a layperson). Those reserved powers include the oversight and authentication of the corporation's mission, the adoption or amendment of a mission statement, and the amendment of articles of incorporation and bylaws.

In addition, all of these affiliates are bound by the Archdiocese's *Policies for Archdiocesan Corporations*, which provide:

> Every Catholic and each agency, entity, or program that claims to carry on the work of the Church must maintain communion with the Church through communion with the bishops The touchstone for the unity of the local Church is the bishop In [some] cases, the bishop's responsibility for oversight is carried out through the several separately incorporated affiliated agencies [that] participate in the Church's mission through education and the corporal works of mercy.

Policies for Archdiocesan Corporations at 1. Consequently, each of these affiliated archdiocesan corporations participates in, and is integral to, the Archdiocese's overall religious mission.

Nevertheless, under the NPRM, each of these religious entities that are separately incorporated would have to independently assess at the beginning of each plan year whether they qualify for the "religious employer" exemption. The NPRM, moreover, suggests that if they do not independently qualify as a "religious employer," they would be unable to participate in the archdiocesan health plan, since that plan will not offer coverage for abortion-inducing drugs, contraception, sterilization, and related education and counseling. In that case, these indisputably religious organizations would be forced to find replacement group health insurance. But without the benefit of pooled financial resources, many of these religious entities would likely be

unable to secure the benefits of self-insurance. Instead, they would have to turn to commercial plans, and would then be exposed not only to the demands of the Mandate that conflict with their religious beliefs, but also to state insurance regulations and mandates from which self-insured plans are currently exempt.

Without the option of a self-insured plan, Catholic organizations with less than fifty employees in the District of Columbia would be required to purchase insurance through the D.C. Exchange.[11] This, in turn, would subject them to the numerous mandates imposed under D.C. law.[12] In addition, it has been reported that this will restrict the ability of these employers to select plans tailored to their needs and may increase costs and premiums to a degree that employers may be forced to choose between dropping their health plans altogether or paying the exorbitant costs of providing coverage.[13] Consequently,

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[11] *See* Ben Fischer, *D.C. Health Insurance Board Moves to Phase in Exchange Mandate*, Wash. Bus. J., Mar. 13, 2013, *available* at *http://www.bizjournals.com/washington/blog/2013/03/dc-health-insurance-board-moves-to-delay.html?page=all.*

[12] Victoria Craig Bunce & J.P Wieske, *Health Insurance Mandates in the States 3* (2010) (citing twenty- seven health mandates under D.C. law and sixty-seven health mandates under Maryland law).

[13] *See* Dennis Bass, *The Bad News for Small Business in D.C.'s Obamacare Plan*, Wash. Post, Oct. 12, 2012, *available at*

employees of these organizations would not only be losing their affordable coverage under the Archdiocese's plan, but they would also face the possibility of losing coverage altogether and being forced to procure individual insurance policies on the D.C., or in some cases, Maryland Exchanges. (This is also why, unless the Mandate is changed, affiliated religious organizations will need a substantial period of time to procure new insurance policies.)

Even if the final rule were to ultimately permit nonexempt religious organizations to participate in an exempt employers' plan, the logistical hurdles to such participation still appear insurmountable. These nonexempt entities would have to ensure that their employees receive access to contraceptive

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http://articles.washingtonpost.com/2012-10-12/opinions/35499292_1_small-employers-higher-costs-aca; Philip Klein, A Talk with D.C.'s Health Exchange Board, Wash. Examiner, Nov. 18, 2012, *available at http://washingtonexaminer.com/a-talk-with-d.c.s-health-exchange-board/article/2513796*; Mercer Consulting, District of Columbia Health Insurance Exchange Marketplace Report (2011), *available at http://www.naifanet.com/100000/Mercer%20Report%20D13%20and%20D16%20Market%20Report%20and%20Summary%20Plan.pdf?CFID=1910208&CFTOKEN=68781248*; Letter to Dr. Mohammad Akhter, Chair, D.C. Health Benefit Exchange Authority Executive Board (Sept. 13, 2012), *available at http://www.naifanet.com/100000/Small%20Employer%20Letter%20FINAL%20with%20addendum%2010-3-2012.pdf?CFID=1910208&CFTOKEN=68781248.*

services through the NPRM's proposed "accommodation." But it is unclear how such services could be provided if the nonexempt entity was part of the archdiocesan plan. These nonexempt organizations have no contractual relationship with the plan's TPA, whose contract is with the Archdiocese. And the TPA's contract with the Archdiocese does not, and would not, authorize the TPA to procure insurance for the objectionable services. Certainly. the Archdiocese, as an exempt "religious employer," would not and could not be forced to participate in the process of providing objectionable insurance coverage to the employees of the Archdiocese's religiously affiliated corporations.

Thus, regardless of whether nonexempt entities could remain on the archdiocesan health plan, it is evident that under the NPRM, the Archdiocese's health plan could not be maintained in a manner consistent with its prior practices and religious beliefs.

B. The NPRM reflects a flawed and arbitrary understanding of religious liberty.

The proposal contained in the NPRM also draws arbitrary distinctions between identically situated employees based solely on the corporate structure of their respective employers. As noted above, the NPRM purports to draw these distinctions based on a belief that employees of a nonexempt entity "may be less likely than participants and beneficiaries in group health plans established or maintained by religious employers" to share their employers religious beliefs. 78 Fed. Reg. at 8461–62. This assertion is baseless. Compare, for instance, a

religion teacher at St. Augustine's School, an archdiocesan Catholic school that is not separately incorporated, to a religion teacher at St. Francis Xavier Academy, an archdiocesan Catholic school that is part of the Consortium of Catholic Academies, a separate civil corporation. These two Catholic school teachers each teach the same religion curriculum and are equally devoted to the task of teaching the Catholic faith through word and example. The corporate structure of the two archdiocesan Catholic schools that employ these teachers is not a reliable proxy for answering the question of "how Catholic" their jobs' duties are or "how devout" they as individuals are likely to be.

The Archdiocese has created separately incorporated organizations to carry out certain aspects of its ministry, not because those particular ministries are any less central to the Catholic faith, but rather for many of the same practical and legal reasons that ordinary civil corporations assume multi-tiered structures. The Consortium of Catholic Academies, for instance, was separately incorporated in part so that it could more thoroughly and effectively devote itself to the challenges of educating the often underserved children of inner city Washington. Surely it is not the Government's contention that employees of schools that serve disadvantaged youth are less likely to be faithful Catholics than teachers at schools in more affluent communities. That, however, is the precise implication of the arbitrary rule the NPRM seeks to establish.

Moreover, the Archdiocese has a special responsibility to ensure that these entities, whatever

the corporate structure, remain faithful to the teachings of the Catholic Church. As noted above, the Archbishop, the Moderator of the Curia, and the Chancellor are the corporate members of each of these affiliated entities. In order to ensure each affiliate's Catholic identity and communion with the Church, the affiliated entities reserve certain powers in their corporate members, including oversight and authentication of the corporation's mission, the adoption or amendment of a mission statement, and the amendment of articles of incorporation and bylaws. In addition, all of these entities remain subject to canon law requirements regarding their Catholic identity, mission and fidelity to Catholic doctrine, as well as the Archdiocese's *Policies for Archdiocesan Corporations*. In short, each separately incorporated affiliate's communion with the archbishop originates in the prescriptions of canon law and is reflected in their civil organizational documents.

The Mandate as revised by the NPRM would destroy this communion and would prevent the Archdiocese from ensuring that each of its affiliated entities acts in accordance with Catholic teachings. It would create division where canon law commands unity, and would undermine the Archdiocese's duty before God to protect the integrity of the Catholic faith as believed and practiced within the local Church, most especially in its affiliated religious corporations. The Government has provided no plausible basis for so deeply (and unconstitutionally) intruding into the religious structure and beliefs of the Archdiocese and other similarly-situated Catholic entities.

IV PROPOSED ALTERNATIVES TO THE NPRM

For the reasons explained above, the Mandate, including the proposals in the NPRM, would deeply intrude into the religious freedom and religious autonomy of the Archdiocese, its affiliated religious entities, and other similar organizations. Set forth below are two proposals that, if adopted, would mitigate these infringements on religious liberty.

First, the portion of the NPRM that requires each employer participating in a group health plan to independently qualify for the religious employer exemption should be rescinded. Instead, the Archdiocese's affiliated religious corporations should continue to be free to participate in the Archdiocese's insurance plan in the same way that they did prior to the NPRM. There is simply no reason to deny affiliated Catholic organizations the benefits conferred on entities like the Archdiocese merely due to the fact that they are independently incorporated. As discussed above, such a distinction rests on a flawed view of religious liberty and would significantly impair the Church's ability to carry out its mission.

Second, and perhaps even more importantly, the scope of the "religious employer" exemption must be expanded. The following are several alternatives to that end—not all perfect, but all far better than the proposal contained in the NPRM.

1. *Conscience Clause*: Federal law is replete with conscience clauses that prevent individuals and entities from being forced to violate their religious

beliefs. For example, the "Church Amendment," 42 U.S.C. § 300a-7, protects hospitals and individuals that receive federal funds in various health programs from participating in abortion and sterilization procedures if such participation is "contrary to [their] religious beliefs or moral convictions." *Id.* Indeed, even the Federal Employees Health Benefit Program, while mandating contraception coverage, nevertheless provides a conscience clause that exempts objecting plans and carriers. *See, e.g.*, Consolidated Appropriations Act, Pub. L. No. 112-74, div. C, tit. VII, § 727, 125 Stat. 786, 936 (2011); *see also* Consolidated Appropriations Act, Pub. L. No. 108-199, div. C, tit. IV, § 424, 118 Stat 3 (2004) ("[I]t is the intent of Congress that any legislation enacted on such issue [of contraceptive coverage by health insurance plans within the District of Columbia] should include a 'conscience clause' which provides exceptions for religious beliefs and moral convictions.").

Accordingly, the Government should adopt the following conscience clause, modeled after the Church Amendment: "Nothing in these regulations shall require the coverage of contraceptive services if the employer objects to such coverage on the basis of religious

beliefs." As the U.S. Conference of Catholic Bishops has noted, this is the only alternative that will completely alleviate the religious liberty concerns raised by the Mandate.[14]

2. *State Law Analogue*: Several states define "religious employer" more broadly than the Mandate. For example, West Virginia defines a "religious employer" as "an entity whose sincerely held religious beliefs or sincerely held moral convictions are central to the employer's operating principles, and the entity is an organization listed under 26 U.S.C. 501(c)(3), 26 U.S.C. 3121, or listed in the Official Catholic Directory published by P J. Kennedy and Sons." W Va. Code § 33-16E-2. Arizona defines a "religious employer" as "[a]n entity whose articles of incorporation clearly state that it is a religiously motivated organization and whose religious beliefs are central to the organization's operating principles." Ariz. Rev. Stat. § 20-1057.08(G)(2).

A definition modeled along these lines would be a substantial improvement over that contained in the NPRM.

For example, the following proposed definition draws on federal conscience

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[14] Comments of the U.S. Conference of Catholic Bishops, *supra* note 8, at 11.

clause language and the language found in the Arizona and West Virginia statutes:

> Section 1. "Religious Employer" is an entity that is exempt from tax under section 501 of title 26 and whose articles of incorporation clearly state that the entity's sincerely held religious beliefs or sincerely held moral convictions are part of the employer's operating principles.
>
> Section 2. Nothing in these regulations shall require the coverage of contraceptive methods, sterilization procedures, and related patient education and counseling if a "Religious Employer" objects to such coverage on the basis of religious beliefs.

3. *ERISA "Church Plans".* Finally, "religious employers" could be defined to include employers that maintain health insurance plans that would qualify as "church plans" under ERISA. A "church plan" is a pension or welfare plan established and maintained "for its employees (or their beneficiaries) by a church or by a convention or association of churches." 29 U.S.C. § 1002(33)(A). Significantly, "church plans" also include those maintained by organizations that are "controlled by or

associated with" churches. *Id.* § 1002(33)(C).

Some federal courts, however, have adopted unduly narrow constructions of ERISA's "church plan" provisions, making this a less than optimal solution. *See Chronister v. Baptist Health*, 442 F.3d 648, 653 (8th Cir. 2006); *Lown v. Cont'l Cas. Co.*, 238 F.3d 543, 548 (4th Cir. 2001). Accordingly, if the Government adopts this proposal, a statement should be included in the preamble to any final rule indicating that the Government intends for this definition to apply to all religious organizations that are affiliated with a church, notwithstanding the narrow standards applied by the Eighth and Fourth Circuits, cited above. While this option is less preferable than the preceding alternatives, it too, would be a substantial improvement over the NPRM.

V CONCLUSION

Ultimately, the NPRM does not address the problems created by the Mandate; indeed, it makes them worse. The result is a proposal that, if implemented, would continue to violate the rights of religious organizations under the First Amendment, RFRA, and numerous other federal statutes. Accordingly, the Archdiocese strongly urges the Government to reconsider its course and, instead, adopt the proposals outlined above.

Sincerely,

/s/ Jane G. Belford
Jane G. Belford
Chancellor

CLINICAL PREVENTIVE SERVICES FOR WOMEN

CLOSING THE GAPS

COMMITTEE ON PREVENTIVE SERVICES FOR WOMEN

BOARD ON POPULATION HEALTH AND PUBLIC HEALTH PRACTICE

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Clinical Preventive Services for Women: Closing the Gaps

* * *

[Page 1]

Summary

BACKGROUND

The Patient Protection and Affordable Care Act of 2010 (ACA) holds much promise—beyond the expansion of health care coverage—for millions of Americans. The preventive health care services and screenings specified in the legislation will be fully

covered without requiring a patient copayment. These include the services with Grade A and B recommendations made by the United States Preventive Services Task Force (USPSTF), the Bright Futures recommendations for adolescents from the American Academy of Pediatrics (AAP) in cooperation with the U.S. Department of Health and Human Services (HHS), and vaccinations specified by the Centers for Disease Control and Prevention's (CDC's) Advisory Committee on Immunization Practices (ACIP). These three sets of guidelines provide a list of preventive services, such as blood pressure measurement, diabetes and cholesterol tests, and mammography and colonoscopy screenings. As part of the ACA, the list of preventive services specific to women's health was requested to be reviewed.

CHARGE TO THE COMMITTEE

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) of HHS provided funds for the Institute of Medicine (IOM) to conduct a review of effective preventive services to ensure women's health and well-being. The charge to the committee for the project is presented in Box S-1.

BOX S-1
Statement of Task to the Committee on Preventive Services for Women

The Institute of Medicine will convene an expert committee to review what preventive services are necessary for women's health and well-being and should be considered in the development of comprehensive guidelines for preventive services for women. The committee will also provide guidance on

a process for regularly updating the preventive screenings and services to be considered. In conducting its work, the committee will: conduct a series of meetings to examine existing prevention guidelines, obtain input from stakeholders, identify gaps that may exist in recommended preventive services for USPSTF Grade A and B preventive services guidelines for women and in Bright Futures and USPSTF Grade A and B guidelines for adolescents, and highlight specific services and screenings that could supplement currently recommended preventive services for women. Specifically, the committee will consider the following questions:

- What is the scope of preventive services for women not included in those graded A and B by the USPSTF?
- What additional screenings and preventive services have been shown to be effective for women? Consideration may be given to those services shown to be effective but not well utilized among women disproportionately affected by preventable chronic illnesses.
- What services and screenings are needed to fill gaps in recommended preventive services for women?
- What models could HHS and its agencies use to coordinate regular updates of the comprehensive guidelines for preventive services and screenings for women and adolescent girls?

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) on behalf of the U.S. Department of Health and Human Services (HHS)

has been charged to examine recommendations for women's preventive services. ASPE will use the information and recommendations from the committee's report to guide policy and program development related to provisions in the Affordable Care Act addressing preventive services for women.

In response, the IOM convened a committee of 16 members—including specialists in disease prevention, women's health issues, adolescent health issues, and evidence-based guidelines—to develop a set of recommendations for consideration by the ASPE of HHS.

The committee sought clarification from ASPE on a number of issues regarding its charge. In summary:

- **Preventive services were specified to be applicable to females aged 10 to 65 years;**
- **The mammography screenings specified in the ACA legislation used USPSTF guidelines from 2002, which specify that such screenings be performed every one to two years for women aged 40 years and older;**
- **The cost-effectiveness of screenings or services could not be a factor for the committee to consider in its analyses leading to its recommendations;**
- **The committee was not intended to duplicate the processes used by the USPSTF and thus should look to other bodies of evidence beyond systematic evidence-based reviews; and**

- **Preventive services were specified for clinical settings, and thus community-based prevention activities were considered beyond the scope of committee consideration.**

COMMITTEE'S APPROACH TO ITS CHARGE

The committee met five times within six months. The committee held three open information-gathering sessions at which the members heard from a diverse group of stakeholders, researchers, members of advocacy organizations, and the public. Box S-2 provides the committee definition of preventive health services.

BOX S-2
Definition of Preventive Health Services

For the purposes of this study, the Committee on Preventive Services for Women defines preventive health services to be measures—including medications, procedures, devices, tests, education and counseling—shown to improve wellbeing, and/or decrease the likelihood or delay the onset of a targeted disease or condition.

COMMITTEE'S METHODOLOGY

The committee's methodology to identify preventive services necessary for women's health and well-being and to identify specific services that could supplement the current list of recommended preventive services for women under the ACA follows.

The committee's first step was to review and reach an understanding of existing guidelines. The second step was to assemble and assess additional evidence.

including reviews of the literature, federal health priority goals and objectives, federal reimbursement policies, and the clinical guidelines of health care professional organizations. The committee also considered the public comments that it received. Finally, the committee formulated a list of recommendations to be considered by the Secretary of HHS in developing a comprehensive package of preventive services for women to be included under the ACA.

USPSTF Recommendations

The USPSTF process for developing recommendations is a disease-focused one. The intent of its recommendations has been to provide guidance to primary care providers. The IOM committee's approach to identifying gaps in existing services accounts for contextual issues beyond traditional research evidence used by the USPSTF. The committee looked at women's preventive service needs more broadly to account for women's health and well-being. The committee found that its interpretation of the Grade A and B recommendations was important in those cases in which ambiguity was found regarding periodicity of screenings. Furthermore, the committee compared USPSTF guidelines with those of numerous health care professional organizations to identify potential gaps.

The committee recognized that USPSTF Grade C recommendations and I statements warranted further analysis because the USPSTF did not develop and has not used these grades as support to offer or deny coverage of a preventive service. The USPSTF

Grade C recommendations are made when the balance of potential benefits and harms does not strongly favor the clinician recommending the preventive service to all patients, although it may be appropriate in some cases.

The USPSTF I statements identify services for which the evidence is insufficient to suggest the effectiveness of a service because evidence is lacking, of lower quality, or conflicting. The committee notes that from a coverage perspective, the evidence supporting many clinical interventions in common use, whether in prevention or in general medical practice, is insufficient or unclear, and coverage decisions may be or have been made on the basis of other factors.

For example, although physician knowledge of the evidence of the benefits associated with a counseling service will inform a physician's decision for each patient, in many instances, it is difficult for researchers to show or conclude that outcomes are positive. Many preventive interventions that are intended to be conducted early in the life span (e.g., skin cancer prevention) require decades to demonstrate effectiveness.

Thus, each of the USPSTF Grade C and I statement recommendations and the evidence supporting them were collected and reviewed. The committee's evaluation included reviewing relevant supporting USPSTF

* * *

TABLE S-1 Continued

Preventive Service	USPSTF Grade	Supporting Evidence	Recommendations
Counseling and screening for human immune-deficiency virus (HIV)	C	The evidence provided to support a recommend-ation for expanding screening for HIV is based on federal goals from the Centers for Disease Control and Prevention, as well as clinical professional guidelines, such as those from the American College of Physicians, the Infectious Diseases Society of America, the American Medical Association, and the American College of Obstetricians and Gynecologists.	**Recommendation 5.4** The committee recommends for consideration as a preventive service for women: counseling and screening for human immunodeficiency virus infection on an annual basis for sexually active women.
Contra-ceptive methods and counseling	Not Addressed	The evidence provided to support a recommend-	**Recommendation 5.5** The committee recommends for

Preventive Service	USPSTF Grade	Supporting Evidence	Recommendations
		ation related to unintended pregnancy is based on systematic evidence reviews and other peer-reviewed studies, which indicate that contraception and contraceptive counseling are effective at reducing unintended pregnancies. Current federal reimbursement policies provide coverage for contraception and contraceptive counseling, and most private insurers also cover contraception in their health plans. Numerous health professional associations recommend family planning	consideration as a preventive service for women: the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.

Preventive Service	USPSTF Grade	Supporting Evidence	Recommendations
		services as part of preventive care for women. Furthermore, a reduction in unintended pregnancies has been identified as a specific goal in *Healthy People 2010* and *Healthy People 2020*.	

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[Page 15]

1.

INTRODUCTION

The passage of the Patient Protection and Affordable Care Act of 2010 (ACA) provides the United States with an opportunity to offer an unprecedented level of population health care coverage and dramatically reduce existing health disparities. The expansion of coverage to millions of uninsured Americans and the new standards for coverage of preventive services that are included in the ACA have the potential to increase the use of preventive health care services and screenings and in turn improve the health and well-being of individuals across the United States.

SPECIFICS OF THE LEGISLATION

The approaches to prevention and wellness offered within the Act are broad based and range from new coverage requirements and incentives to expand workplace wellness activities to new investments. Among these are prohibition of the imposition of cost-sharing requirements for recommended preventive services (an overview of the Act is provided in Box 1 1, and the preventive services are listed and described in detail in Chapter 2), the requirement to link health insurance premiums to participation in health promotion programs, public health workforce development (the ACA authorizes new training and placement programs for public health workers), and community-based prevention activities.

This report focuses on the preventive services for women specified in Section 2713 of the Public Health Service Act. These services were added by the ACA and are detailed in the last bulleted item in Box 1-1 (HHS, 2010; *Federal Register*, 2010).

BOX 1-1
Overview of Regulations in Section 2713 of the Public Health Service Act

Section 2713 of the Public Health Service Act, Coverage of Preventive Health Services, which was added by the Affordable Care Act, and the interim final regulations (26 CFR 54.9815-2713T, 29 CFR 2590.715-2713, 45 CFR 147.130) require that group health plans and health insurance issuers offering health insurance coverage for groups or individuals provide benefits and prohibit the imposition of cost-sharing requirements for

- Medical devices or services that are evidence based and that have, in effect, a rating of Grade A or B in the current recommendations of the United States Preventive Services Task Force (USPSTF) for the individual involved.
- Immunizations for routine use in children, adolescents, and adults that have, in effect, a recommendation from the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC) for the individual involved. A recommended ACIP immunization is considered to be "in effect" after it has been adopted by the CDC director. A recommended immunization is considered to be for routine use if it appears on the immunization schedules of the Centers for Disease Control and Prevention.
- Preventive health care and screenings for infants, children, and adolescents informed by scientific evidence and provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- Preventive health care and screenings for women informed by scientific evidence and provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the USPSTF). The U.S. Department of Health and Human Services is developing these guidelines and expects to issue them no later than August 1, 2011.

The complete list of recommendations and guidelines

that these interim final regulations are required to cover can be found at http://www.HealthCare.gov/center/regulations/prevention.html.

ROLE OF PREVENTION IN ADDRESSING HEALTH AND WELL-BEING

Prevention is a well-recognized, effective tool in improving health and well-being and has been shown to be cost-effective in addressing many conditions early (Maciosek et al., 2010). Prevention goes beyond the use of disease prevention measures. For example, interventions to prevent injuries and binge drinking can increase positive health outcomes and reduce harm.

Historically, the many disparate components of the U.S. health care system have relied more on responding to acute problems and the urgent needs of patients than on prevention. Although these functions are appropriate for acute and episodic health problems, a notable disparity occurs when this model of care is applied to the prevention and management of chronic conditions. The provision of preventive health care services is thus inherently different from the treatment of acute problems, but the U.S. health care system has fallen short in the provision of such services. Compared with a system that prevents avoidable conditions early, a system that responds to the acute health care needs of patients can be inefficient and costly, and a focus on response instead of prevention is a major barrier to the achievement of optimal health and well-being by Americans.

Nearly half of all deaths in the United States are caused by modifiable health behaviors (McGinnis and Foege, 1993). Maciosek and colleagues found that an increase in the use of clinical preventive services in the United States could result in the saving of more than 2 million life-years annually (Maciosek et al., 2010). Because of the numbers of diseases and conditions that are preventable, inclusion of support for prevention has become more routine during clinical health care visits (Sussman et al., 2006). When patients are systematically provided with the tools and information that they need to reduce their health risks, the likelihood that they will take steps to, for example, reduce substance use, stop using tobacco products, practice safe sex, eat healthful foods, and engage in physical activity increases (WHO, 2002). Therefore, physicians who routinely educate patients on risk-reducing behaviors may reduce the long-term burden and health care demands of chronic conditions. Stimulating the commitment and action of patients, families, and health care teams is also necessary to promote prevention and improve overall population well-being.

Evidence-based testing, diagnosis, and relief of symptoms are also hallmarks of contemporary health care, but these services are often underutilized. A well-cited reason for this underutilization is, for example, the high cost of prescription copayments, with the result being that patients do not fill their prescribed medications, resulting in the loss of lives and dollars (Shrank et al., 2010). Moreover, a recent study by The Commonwealth Fund that analyzed the responses of U.S. adults to a questionnaire indicated

that U.S. adults were significantly less likely than adults in all other countries studied to have confidence in their ability to afford health care (Schoen et al., 2009).

About 51 million Americans lacked health insurance in 2009 (DeNavas-Walt et al., 2010). This is in addition to the millions of under-insured Americans who lack access to the appropriate screenings and services needed to detect and address preventable health conditions and diseases. Furthermore, health care workers have often failed to seize patient interactions as opportunities to promote health and well-being and to inform patients about disease prevention strategies (WHO, 2002). This failure to inform patients has been found to be due to time constraints in the clinical setting, a lack of reimbursement for provision of these services, and a lack of consensus and provider knowledge about what services to prioritize for their patients. The ACA intends to mitigate these issues.

WHY WOMEN?

The ACA has the potential to transform the way in which the U.S. health care system addresses women's health issues in many ways. It expands access to coverage to millions of uninsured women, ends discriminatory practices such as gender rating in the insurance market, eliminates exclusions for preexisting conditions, and improves women's access to affordable, necessary care. The Women's Health Amendment (*Federal Register*, 2010), which was introduced by Senator Barbara Mikulski and which was added to the ACA, expands on these improvements by requiring that all private health

plans cover—with no cost-sharing requirements—a newly identified set of preventive health care services for women. Defining appropriate preventive services for women and ensuring that those services can be accessed without cost sharing are important strategies to improve women's health and well-being (Bernstein et al., 2010; Blustein, 1995).

Many reasons exist for expanding the list of preventive care and screening services for women beyond those included in the guidelines of the United States Preventive Services Task Force (USPSTF) Grade A and B guidelines, the Advisory Committee on Immunization Practices (ACIP), and Bright Futures (for adolescents) stipulated in the ACA (USPSTF, ACIP, and Bright Futures and their guidelines are described in detail in Chapter 2). Even though women have longer life expectancies than men, women suffer from chronic disease and disability at rates disproportionate to those of men, with consequences for their own health and the health of their families (Wood et al., 2010). Furthermore, mounting evidence suggests that women not only have different health care needs than men (because of reproductive differences) but also manifest different symptoms and responses to treatment modalities (IOM, 2010). Behavioral factors that are shown to contribute to morbidity and mortality in women, include smoking, eating habits, physical activity, sexual risk-taking, and alcohol use (IOM, 2010). Pregnancy and childbirth also carry risks to women's health including maternal mortality (CDC, 2008). Figure 1 1 illustrates preventable mortality in women.

Health outcomes occur because of multiple factors including biology, behavior, and the social, cultural, and environmental contexts in which women live. Smoking, eating habits, physical activity, and other health-related behaviors are shaped by cultural and social contexts, including factors associated with social disadvantage. The marked differences in

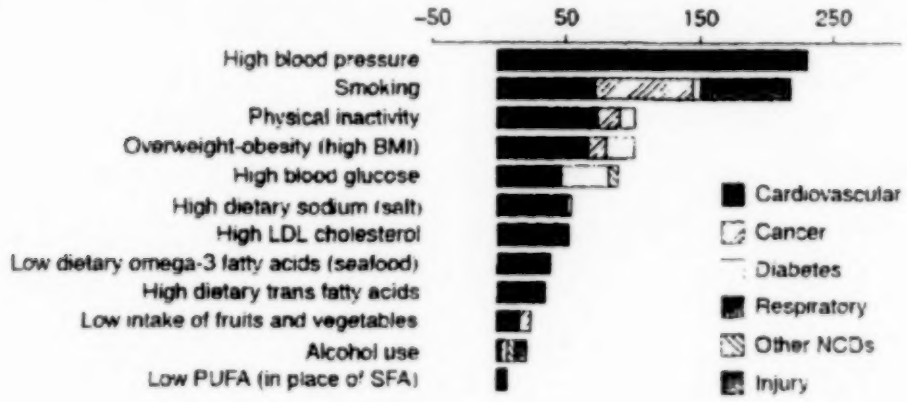

FIGURE 1-1 Deaths in women attributable to total effects of individual risk factors (in thousands), by disease.

ABBREVIATIONS: BMI, body-mass index; LDL, low-density lipoproteins; NCD, non-communicable disease; PUFA, polyunsaturated fatty acid; SFA, saturated fatty acid.

SOURCE: Danaei et al. (2009).

condition prevalence and mortality in women who experience social disadvantage are associated with minority race/ethnicity, lower education, low income, and differential exposure to stressors such as domestic violence. Such exposures are related to outcomes as varied as injury and trauma, depression,

asthma, heart disease, human immunodeficiency virus (HIV) infection, and other sexually transmitted infections (Campbell et al., 2002; Coker et al., 2000; Ozer and Weinstein, 2004; Tjaden and Thoennes, 1998).

On average, women need to use more preventive care than men (Asch et al., 2006; HHS, 2001), owing to reproductive and gender-specific conditions, causing significant out-of-pocket expenditures for women (Bertakis et al., 2000; Kjerulff et al., 2007). This creates a particular challenge to women, who typically earn less than men and who disproportionately have low incomes. Indeed, women are consistently more likely than men to report a wide range of cost-related barriers to receiving or delaying medical tests and treatments and to filling prescriptions for themselves and their families (KFF, 2010). For example, women have been shown to be more likely than men to forgo preventive services such as cancer screenings and dental examinations because of cost (Rustgi et al., 2009). Studies have also shown that even moderate copayments for preventive services such as mammograms and Pap smears deter patients from receiving those services (Solanki et al., 2000; Trivedi et al., 2010). A 2010 Commonwealth Fund survey found that 44 percent of adult women (compared with 35 percent of adult men) either reported that they had a problem paying medical bills or indicated that they were paying off medical debt over time, an increase from 38 percent in 2005 (Robertson and Collins, 2011). The same survey indicated that less than half of women are up to date with recommended preventive care screenings and services (Robertson and Collins, 2011).

Most women and men in the United States are covered by insurance obtained through the workplace. However, women with employer-based insurance are almost twice as likely as men to be covered as dependents, increasing their vulnerability to losing their insurance if they divorce, their partners lose their jobs, or they become widowed (KFF, 2010). Even though results of studies indicate that evidence-based preventive care services lower the burden of disease, are often cost-effective, increase the efficiency of health care spending, and contribute to the creation of a more productive and prosperous America, many financial barriers exist that prevent women from achieving health and well-being for themselves and their families.

PREVENTIVE SERVICES FOR WOMEN

Preventive services for women are services that prevent conditions harmful to women's health and well-being. "Conditions" are considered diseases, disabilities, injuries, behaviors, and functional states that have direct implications for women s health and well-being. These conditions may be specific to women, such as gynecologic infections and unintended pregnancy; they may be more common or more serious in women, such as autoimmune diseases and depression; they may have distinct causes or manifestations in women, such as alcohol abuse, obesity, and interpersonal violence-related posttraumatic stress disorder; or they may have different outcomes in women or different treatments, such as cardiovascular disease and diabetes (IOM, 2010). To "prevent" is to forestall the onset of a condition; detect a condition at an early stage, when it is more treatable; or slow the progress of a

condition that may worsen or result in additional harm. Preventive services may therefore include the provision of immunizations, screening tests, counseling and education, Food and Drug Administration-approved medications and devices, procedures, and over-the-counter medications and devices.

COMMITTEE ON PREVENTIVE SERVICES FOR WOMEN

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) of the U.S. Department of Health and Human Services (HHS) asked the Institute of Medicine to convene a diverse committee of experts in disease prevention, women's health issues, adolescent health issues, and evidence-based guidelines to review existing guidelines, identify existing coverage gaps, and recommend services and screenings for HHS to consider in order to fill those gaps (Box 1-2). A 16-member committee was selected to complete the statement of task.

In subsequent guidance to the committee, HHS sponsors at ASPE directed the committee to limit its focus to females between the ages of 10 and 65 years.

BOX 1-2
Statement of Task to the Committee on Preventive Services for Women

The Institute of Medicine will convene an expert committee to review what preventive services are necessary for women's health and well-being and should be considered in the development of comprehensive guidelines for preventive services for women. The committee will also provide guidance on a process for regularly updating the preventive

screenings and services to be considered. In conducting its work, the committee will: conduct a series of meetings to examine existing prevention guidelines, obtain input from stakeholders, identify gaps that may exist in recommended preventive services for USPSTF Grade A and B preventive services guidelines for women and in Bright Futures and USPSTF Grade A and B guidelines for adolescents, and highlight specific services and screenings that could supplement currently recommended preventive services for women. Specifically, the committee will consider the following questions:

- What is the scope of preventive services for women not included in those graded A and B by the USPSTF?
- What additional screenings and preventive services have been shown to be effective for women? Consideration may be given to those services shown to be effective but not well utilized among women disproportionately affected by preventable chronic illnesses.
- What services and screenings are needed to fill gaps in recommended preventive services for women?
- What models could HHS and its agencies use to coordinate regular updates of the comprehensive guidelines for preventive services and screenings for women and adolescent girls?

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) on behalf of the U.S. Department of Health and Human Services (HHS)

has been charged to examine recommendations for women's preventive services. ASPE will use the information and recommendations from the committee's report to guide policy and program development related to provisions in the Affordable Care Act addressing preventive services for women.

The ACA defines the current USPSTF recommendations regarding breast cancer screening, mammography, and breast cancer prevention to be "the most current other than those issued in or around November 2009." Thus, coverage for screening mammography is guided by the 2002 USPSTF guideline, which specifies that such screenings be performed every one to two years for women aged 40 years and older.

Furthermore, for consistency in approach with the other three guidelines used by the ACA and given the time limitations for this study, the committee was restricted from considering cost-effectiveness in its process for identifying gaps in current recommendations. Finally, despite the potential health and well-being benefits to some women, abortion services were considered to be outside of the project's scope, given the restrictions contained in the ACA.

The committee received clarification from ASPE that its work was not intended to duplicate the processes used by the USPSTF or Bright Futures. Thus, the committee interpreted this guidance to indicate that evidence ranging from systematic reviews of the evidence to other bodies of evidence could be considered. This appears to be consistent

with the process that led to the current preventive services within the ACA.

The committee was also directed to limit its work to identifying clinical preventive service coverage gaps and not to make recommendations regarding community-based prevention activities.

The committee recognizes that many factors that shape the health and well-being of women fall outside the realm of clinical services. These include, for example, changes to the environment and the workplace to promote health, changes in women's concept of self-efficacy to promote health, and changes in women's self-empowerment to address their own health and wellness. These factors and determinants of health are elements of models such as the Whitehead and Dahlgren (1991) determinants-of-health model and encompass biological, behavioral, and social factors. Nevertheless, evaluation of these factors and determinants of health were outside of the committee's purview.

HHS will consider the committee's recommendations as it develops guidelines to support the delivery of effective preventive services for women. If they are enacted, the recommendations from this study, along with the other coverage requirements in the ACA, will provide a comprehensive package of clinical preventive services for women.

COMMITTEE PROCESS

To meet its charge, the committee held three information-gathering meetings on preventive services for women and reviewed the relevant

literature. Before the first meeting and throughout the committee's delibera-

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[Page 102]

the stage of HIV progression actually reduced their risk of transmitting the virus to their partners by 96 percent (NIAID, 2011).

Identified Gaps

The primary gap in preventive services not already addressed by the provisions set forth in the ACA (reviewed in this section) is that current screening recommendations by the USPSTF are limited in scope; that is, they are limited to pregnant women and high-risk adolescents and adults.

The evidence provided to support a recommendation for expanding screening is based on federal goals from the CDC, as well as clinical professional guidelines, such as those from the ACP, IDSA, AMA, and ACOG.

Recommendation 5.4: The committee recommends for consideration as a preventive service for women: counseling and screening for HIV infection on an annual basis for sexually active women.

PREVENTING UNINTENDED PREGNANCY AND PROMOTING HEALTHY BIRTH SPACING

Unintended pregnancy is defined as a pregnancy that is either unwanted or mistimed at the time of conception (Finer and Henshaw, 2006) and affects women with reproductive capacity, that is, from the time of menarche to menopause. Family planning services that are provided to prevent unintended

pregnancies include contraception (i.e., all FDA-approved contraceptive drugs and devices, sterilization procedures) as well as patient education and counseling.

Prevalence/Burden

Unintended pregnancy is highly prevalent in the United States. In 2001, an estimated 49 percent of all pregnancies in the United States were unintended—defined as unwanted or mistimed at the time of conception— according to the National Survey of Family Growth (Finer and Henshaw, 2006). The unintended pregnancy rate is much lower in other developed countries (Trussell and Wynn, 2008). In 2001, 42 percent of U.S. unintended pregnancies ended in abortion (Finer and Henshaw, 2006). Although 1 in 20 American women has an unintended pregnancy each year, unintended pregnancy is more likely among women who are aged 18 to 24 years and unmarried, who have a low income, who are not high school graduates, and who are members of a racial or ethnic minority group (Finer and Henshaw, 2006).

The consequences of an unintended pregnancy for the mother and the baby have been documented, although for some outcomes, research is limited. Because women experiencing an unintended pregnancy may not immediately be aware that they are pregnant; their entry into prenatal care may be delayed, they may not be motivated to discontinue behaviors that present risks for the developing fetus; and they may experience depression, anxiety, or other conditions. According to the IOM Committee on Unintended Pregnancy, women with unintended

pregnancies are more likely than those with intended pregnancies to receive later or no prenatal care, to smoke and consume alcohol during pregnancy, to be depressed during pregnancy, and to experience domestic violence during pregnancy (IOM, 1995).

A more recent literature review found that U.S. children born as the result of unintended pregnancies are less likely to be breastfed or are breastfed for a shorter duration than children born as the result of intended pregnancies and that mothers who have experienced any unwanted birth report higher levels of depression and lower levels of happiness (Gipson et al., 2008). Finally, a recent systematic literature review found significantly increased odds of preterm birth and low birth weight among unintended pregnancies ending in live births compared with pregnancies that were intended (Shah et al., 2008).

The risk factors for unintended pregnancy are female gender and reproductive capacity. Although certain subgroups of women are at greater risk for unintended pregnancy than others (e.g., women aged 18 to 24 years, unmarried women, women with low incomes, women who are not high school graduates, and women who are members of a racial or ethnic minority group), all sexually active women with reproductive capacity are at risk for unintended pregnancy. In 2008, approximately 36 million U.S. women of reproductive age (usually defined as ages 15 to 44 years) were estimated to be in need of family planning services because they were sexually active, able to get pregnant, and not trying to get pregnant (Frost et al., 2010). More than 99 percent of U.S. women aged 15 to 44 years who have ever had sexual

intercourse with a male have used at least one contraceptive method (Mosher and Jones, 2010).

Pregnancy spacing is important because of the increased risk of adverse pregnancy outcomes for pregnancies that are too closely spaced (within 18 months of a prior pregnancy). Short interpregnancy intervals in particular have been associated with low birth weight, prematurity, and small for gestational age births (Conde-Agudelo et al., 2006; Fuentes-Afflick and Hessol, 2000; Zhu, 2005). In addition, women with certain chronic medical conditions (e.g., diabetes and obesity) may need to postpone pregnancy until appropriate weight loss or glycemic control has been achieved (ADA, 2004; Johnson et al., 2006). Finally, pregnancy may be contraindicated for women with serious medical conditions such as pulmonary hypertension (etiologies can include idiopathic pulmonary arterial hypertension and others) and cyanotic heart disease, and for women with the Marfan Syndrome (Meijboom et al., 2005; Regitz-Zagrosek et al., 2008; Warnes, 2004).

Existing Guidelines and Recommendations

Numerous health care professional associations and other organizations recommend the use of family planning services as part of preventive care for women, including ACOG, AAFP, the American Academy of Pediatrics (AAP), the Society of Adolescent Medicine, the AMA, the American Public Health Association, the Association of Women's Health, Obstetric and Neonatal Nurses, and the March of Dimes. In addition, the CDC recommends family planning services as part of preventive visits for preconception health (Johnson et al., 2006).

The USPSTF does not address prevention of unintended pregnancy. Bright Futures recommends that information about contraception be offered to all sexually active adolescents and those who plan to become sexually active (AAP, 2008).

The IOM Committee on Women's Health Research recently identified unintended pregnancy to be a health condition of women for which little progress in prevention has been made, despite the availability of safe and effective preventive methods (IOM, 2010b). This report also found that progress in reducing the rate of unintended pregnancy would be possible by "making contraceptives more available, accessible, and acceptable through improved services (IOM, 2010b). Another IOM report on unintended pregnancy recommended that "all pregnancies should be intended" at the time of conception and set a goal to increase access to contraception in the United States (IOM, 1995). *Healthy People 2020* (HHS, 2011a), which sets health goals for the United States, includes a national objective of increasing the proportion of pregnancies that are intended from 51 to 56 percent. In addition, *Healthy People 2020* sets goals to increase the number of insurance plans that offer contraceptive supplies and services, to reduce the proportion of pregnancies conceived within 18 months of a previous birth, and to increase the proportion of females or their partners at risk of unintended pregnancy who used contraception during the most recent sexual intercourse (HHS, 2011a).

Effective Interventions

Family planning services are preventive services that enable women and couples to avoid an unwanted pregnancy and to space their pregnancies to promote optimal birth outcomes. A wide array of safe and highly effective FDA-approved methods of contraception is available, including barrier methods, hormonal methods, emergency contraception, and implanted devices; sterilization is also available for women and for men (FDA, 2010). This range of methods provides options for women depending upon their life stage, sexual practices, and health status. Some methods, such as condoms, spermicides, and emergency contraceptives, are available without a prescription, whereas the more effective hormonal and long-acting reversible methods, such as oral contraceptives and intrauterine devices, are available by prescription or require insertion by a medical professional. Sterilization is a surgical procedure. For women with certain medical conditions or risk factors, some contraceptive methods may be contraindicated. These can be assessed clinically so that an appropriate method can be selected for the individual (CDC, 2010; Dragoman et al., 2010).

The effectiveness of contraceptives is determined by studying the rate of failure (i.e., having an unintended pregnancy) in the first year of use (Table 5-3). The failure rates of all FDA-approved methods in both U.S. and international populations have been well documented and are negligible with proper use (Amy and Tripathi, 2009; Hatcher et al., 2007; Kost et al., 2008; Mansour et al., 2010). Female sterilization, the intrauterine device, and the contraceptive implant have failure rates of 1 percent

or less in the first 12 months of use (Fu et al., 1999; Hatcher et al., 2007). Injectable and oral contraceptives have use failure rates of seven and 9 percent, respectively, because some women miss or delay an injection or pill (Kost et al., 2008). Failure rates for both male and female condoms and other barrier methods are higher (e.g., 15 percent for the male condom) (Amy and Tripathi, 2009). These rates compare with an 85 percent chance of an unintended pregnancy within 12 months among couples using no method of contraception (Hatcher et al., 2007; Trussell and Kost, 1987).

In addition to this evidence of method effectiveness, evidence exists that greater use of contraception within the population produces lower unintended pregnancy and abortion rates nationally. Studies show that as the rate of contraceptive use by unmarried women increased in the United States between 1982 and 2002, rates of unintended pregnancy and abortion for unmarried women also declined (Boonstra et al., 2006). Other studies show that increased rates of contraceptive use by adolescents from the early 1990s to the early 2000s was associated with a decline in teen pregnancies and that periodic increases in the teen pregnancy rate are associated with lower rates of contraceptive use (Santelli and Melnikas, 2010).

As with all pharmaceuticals and medical procedures, contraceptive methods have both risks and benefits. Side effects are generally considered minimal (ACOG, 2011a,b,c; Burkman et al., 2004). Death rates associated with contraceptive use are low and, except for oral contraceptive users who smoke, lower than the U.S. maternal mortality rate (Hatcher

et al., 1998). For example, the oral contraceptive death rate per 100,000 users under the age of 35 years who are nonsmokers was 1.5 per 100,000 live births (Hatcher et al., 1998), compared with 11.2 maternal deaths per 100,000 live births in 2006 (age adjusted) (CDC, 2010c).

TABLE 5-3 Percentage of U.S. Women Experiencing an Unintended Pregnancy During First Year of Typical Use and First Year of Perfect Use, by Contraceptive Method

	% Experiencing Unintended Pregnancy in First Year of	
Method	Typical Use[a]	Perfect Use[b]
None	85	85
Spermicides (foams, creams, gels, vaginal suppositories, and vaginal film)	29	18
Withdrawal	27	4
Fertility awareness-based methods[c]	25	
Standard days method		5
Two-day method		4
Ovulation method		3
Sponge		
Parous women	32	20
Nulliparous women	16	9
Diaphragm (with spermicidal cream or jelly)	16	6

Condom (without spermicides)		
Female	21	5
Male	15	2
Combined pill and progestin-only pill	8	0.30
Evra patch	8	0.30
NuvaRing	8	0.30
Depro-Provera	3	0.30
Intrauterine Device		
ParaGard (copper T)	0.80	0.60
Mirena (LNG-IUS)	0.20	0.20
Implanon	0.05	0.05
Female sterilization	0.50	0.50
Male sterilization	0.15	0.10

[a] Among typical couples who initiate use of a method (not necessarily for the first time), the percentage who experience an accidental pregnancy during the first year if they do not stop use for any other reason.

[b] Among couples who initiate use of a method (not necessarily for the first time) and who use it perfectly (both consistently and correctly), the percentage who experience an accidental pregnancy during the first year if they do not stop use for any other reason.

[c] The ovulation and 2-day methods are based on evaluation of cervical mucus. The standard day method avoids intercourse on cycle days 8 through 19.

SOURCE: © 2007 by Contraceptive Technology Communications Reprinted by permission of Ardent Media, Inc.

Contraceptive methods often have benefits separate from the ability to plan one's family and attain optimal birth spacing. For example, the non-contraceptive benefits of hormonal contraception

include treatment of menstrual disorders, acne or hirsutism, and pelvic pain (ACOG, 2010a). Long-term use of oral contraceptives has been shown to reduce a woman's risk of endometrial cancer, as well as protect against pelvic inflammatory disease and some benign breast diseases (PRB, 1998). The Agency for Healthcare Research and Quality (AHRQ) is currently undertaking a systematic evidence review to evaluate the effectiveness of oral contraceptives as primary prevention for ovarian cancer (AHRQ, 2011).

Education and counseling are important components of family planning services because they provide information about the availability of contraceptive options, elucidate method-specific risks and benefits for the individual woman, and provide instruction in effective use of the chosen method (NBGH, 2005; Shulman, 2006). Research on the effectiveness of structured contraceptive counseling is limited (Halpern et al., 2006; Lopez et al., 2010b; Moos et al., 2003). However, studies show that postpartum contraceptive counseling increases contraceptive use and decreases unplanned pregnancy (Lopez et al., 2010a), that counseling increases method use among adolescents in family planning clinics (Kirby, 2007), that counseling decreases nonuse of contraception in older women of reproductive age (35 to 44 years) who do not want a future baby (Upson et al., 2010), and that counseling of adult women in primary care settings is associated with greater contraceptive use and the use of more effective methods (Lee et al., 2011; Weisman et al., 2002).

Although it is beyond the scope of the committee's consideration, it should be noted that contraception is highly cost-effective. The direct medical cost of unintended pregnancy in the United States was estimated to be nearly $5 billion in 2002, with the cost savings due to contraceptive use estimated to be $19.3 billion (Trussell, 2007). The cost-effectiveness of family planning is also documented in an evaluation of FamilyPact, California's 1115 Medicaid Family Planning Waiver Program. The unintended pregnancies averted in this program in 2002 would have cost the state $1.1 billion within two years, and $2.2 billion within five years, for public-sector health and social services that otherwise would have been needed (Amaral et al., 2007).

In a study of the cost-effectiveness of specific contraceptive methods, all contraceptive methods were found to be more cost-effective than no method, and the most cost-effective methods were long-acting contraceptives that do not rely on user compliance (Trussell et al., 2009). The most common contraceptive methods used in the United States are the oral contraceptive pill and female sterilization. It is thought that greater use of long-acting, reversible contraceptive methods—including intrauterine devices and contraceptive implants that require less action by the woman and therefore have lower use failure rates—might help further reduce unintended pregnancy rates (Blumenthal et al., 2011). Cost barriers to use of the most effective contraceptive methods are important because long-acting, reversible contraceptive methods and sterilization have high up-front costs (Trussell et al., 2009).

Contraceptive coverage has become standard practice for most private insurance and federally funded insurance programs. For example, contraceptive services are covered for all federal employees and individuals who obtain their care through federally financed programs, such as VA, TRICARE for active-duty military and their dependents, and IHS. Federal programs provide funding for family planning services in community health centers through the Public Health Service Act, in family planning centers through Title X [Population Research and Voluntary Family Planning Programs (PL. 91-572)], through the Maternal and Child Health Block Grant, and through the Medicaid program.

Since 1972, Medicaid, the state-federal program for certain low-income individuals, has required coverage for family planning in all state programs and has exempted family planning services and supplies from cost-sharing requirements. In addition, 26 states currently operate special Medicaid-funded family planning programs for low-income women who either no longer qualify for Medicaid or do not meet the program's categorical requirements. In Massachusetts, family planning services with no copayments will be included as part of the preventive benefits offered to members of Commonwealth Care, a program of subsidized health insurance for low- and moderate-income people (Personal communication, Stephanie Chrobak and Nancy Turnbull, Massachusetts Health Connector, May 10, 2011).

Private employers have also expanded their coverage of contraceptives as part of the basic benefits packages of most policies. This expansion

has occurred in response to state and federal policies. Twenty-eight states now have regulations requiring private insurers to cover contraceptives, and 17 of these states also require that insurance cover the associated outpatient visit costs (Guttmacher Institute, 2011) (see Chapter 3). A federal court ruling issued in 2000 by the Equal Employment Opportunity Commission found an employer's failure to cover prescription contraceptive drugs and devices in a health plan that covers other drugs, devices, and preventive care to be discrimination against women in violation of Title VII of the Civil Rights Act (EEOC, 2000).

In 2007, NBGH recommended that employer-sponsored health plans include coverage of family planning services, without cost sharing, as part of a minimum set of benefits for preventive care. The Guttmacher Institute also calls comprehensive coverage of contraceptive services and supplies "the current insurance industry standard," with more than 89 percent of insurance plans covering contraceptive methods in 2002 (Camp, 2011). A more recent 2010 survey of employers found that 85 percent of large employers and 62 of small employers offered coverage of FDA-approved contraceptives (Claxton et al., 2010).

Despite increases in private health insurance coverage of contraception since the 1990s, many women do not have insurance coverage or are in health plans in which copayments for visits and for prescriptions have increased in recent years. In fact, a review of the research on the impact of cost sharing on the use of health care services found that cost-sharing requirements, such as deductibles and

copayments, can pose barriers to care and result in reduced use of preventive and primary care services, particularly for low-income populations (Hudman and O'Malley, 2003). Even small increments in cost sharing have been shown to reduce the use of preventive services, such as mammograms (Trivedi et al., 2008). The elimination of cost sharing for contraception therefore could greatly increase its use, including use of the more effective and longer-acting methods, especially among poor and low-income women most at risk for unintended pregnancy. A recent study conducted by Kaiser Permanente found that when out-of-pocket costs for contraceptives were eliminated or reduced, women were more likely to rely on more effective long-acting contraceptive methods (Postlethwaite et al., 2007).

Identified Gaps

Contraception and contraceptive counseling are not currently in the array of preventive services available to women under the ACA.

Systematic evidence reviews and other peer-reviewed studies provide evidence that contraception and contraceptive counseling are effective at reducing unintended pregnancies. Current federal reimbursement policies provide coverage for contraception and contraceptive counseling and most private insurers also cover contraception in their health plans. Numerous health professional associations recommend family planning services as part of preventive care for women. Furthermore, a reduction in unintended pregnancies has been identified as a specific goal in *Healthy People 2010* and *Healthy People 2020* (HHS, 2000, 2011a).

Recommendation 5.5: The committee recommends for consideration as a preventive service for women: the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.

BREASTFEEDING

Breastfeeding benefits the mother, the child, and society. The challenge is to ensure that the majority of mothers initiate breastfeeding and exclusively breastfeed their children during the first six months, with breastfeeding continuing to a year or beyond for every child (Gartner et al., 1997).

Prevalence/Burden

An AHRQ report from 2007 includes a summary of systematic reviews and meta-analyses on breastfeeding and maternal and infant health outcomes (Ip et al., 2007). The evidence is clear that breastfeeding reduces Sudden Infant Death Syndrome, gastrointestinal infections, upper and lower respiratory diseases, childhood leukemia, asthma, ear infections, childhood obesity, and diabetes mellitus type 2 risk for children, as well as rates of hospitalization (Table 5-4). They also concluded that sufficient results are available to be able to state that breastfeeding significantly lowers the maternal risk of breast and ovarian cancers (Table 5-4). Breastfeeding soon after birth may reduce the risk of maternal blood loss and enhance maternal-infant bonding (ACNM, 2004). A recent study concluded that if 90 percent of all children were

exclusively breastfeed during the first six months of life, the United States would save $13 billion per year and prevent an excess of 911 deaths (Bartick and Reinhold, 2010). If only 80 percent of U.S. families complied, $10.5 billion would be saved and 741 deaths would be prevented each year.

In the United States, the majority of pregnant women plan to breastfeed (DiGirolamo et al., 2005), and yet there is a clear gap between the proportion of women who prenatally intend to breastfeed and those who actually do so by the time they are discharged after a brief hospital stay (California WIC Association and U.C. Davis Human Lactation Center, 2008; CDC, 2007b). The National Immunization Survey found that among the mothers of children born in 2007, 75 percent of mothers initiated breastfeeding, 43 percent were breastfeeding at six months, and 22 percent were breastfeeding at 12 months (CDC, 2007b). Although considerable progress has been made through overall promotion of breastfeeding in the United States, gains in breastfeeding rates have not been made equally across geographic, racial, and socioeconomic groups (Table 5-5).

Contrary to popular conception, breastfeeding appears to be a learned skill and the mother must be supported to be successful. Nevertheless,

* * *

[Page 231]

Appendix D

Dissent and Response

This appendix has two parts. The first is a dissent statement from committee member Anthony Lo Sasso, and the second is a response from the chair and the other 14 members of the Committee on Preventive Services for Women.

DISSENTING OPINION

Anthony Lo Sasso

Summary

Given the combination of the unacceptably short time frame for the PSW committee to conduct or solicit meaningful reviews of the evidence associated with the preventive nature of the services considered, this dissent advocates that no additional preventive services beyond those explicitly stated in the Affordable Care Act (ACA) be recommended for consideration by the Secretary for first dollar coverage until such time as the evidence can be objectively and systematically evaluated and an appropriate framework can be developed. The long-run risks associated with making poorly informed decisions, and their likely irreversibility once codified, outweigh the ACA-mandated rapidity with which the committee was confronted.

Rationale

The ACA provided the impetus for the IOM to form a panel to make recommendations about screening and preventive services that "have been shown to be effective for women" that in turn will be considered by the Secretary for coverage on a first-dollar basis by all new private plans in operation in 2014.

However, a remarkably short time frame was provided for the task of reviewing all evidence for preventive services beyond the services encompassed by the USPSTF, Bright Futures and ACIP· the final report from the committee was needed barely six months from the time the group was empanelled.

As the Report acknowledges, the lack of time prevented a serious and systematic review of evidence for preventive services. This should in no way reflect poorly on the tireless work of the committee and staff; it instead merely reflects the fact that the process set forth in the law was unrealistic in the time allocated to such an important and time-intensive undertaking. Where I believe the committee erred was with their zeal to recommend something despite the time constraints and a far from perfect methodology.

The Report posits four categories as the basis for the recommendations ranging from "high quality systematic evidence reviews" (Category I) to potentially self-serving guidelines put forth by professional organizations (Category IV). The categories alone on their face provide little basis to exclude many preventive services. For example, Category II asks whether there are any "quality" supportive peer-reviewed studies, but there is no clear benchmark for what quality means in this context; many studies published in peer-reviewed journals (even very well respected journals) are of low quality and are not generalizable. The problematic nature of the categories aside, the relative weights applied to each category vis-à-vis the recommendations were not specified, making it impossible to discern what factors were most

important in the decision to recommend one service versus another. The categories were combined with expert judgment from members of the committee and supplemented with committee debate to arrive at the recommendations put forth in the Report. Readers of the Report should be clear on the fact that the recommendations were made without high quality, systematic evidence of the preventive nature of the services considered. Put differently, evidence that use of the services in question leads to lower rates of disability or disease and increased rates of well-being is generally absent.

The view of this dissent is that the committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy. An abiding principle in the evaluation of the evidence and the recommendations put forth as a consequence should be transparency and strict objectivity, but the committee failed to demonstrate these principles in the Report. This dissent views the evidence evaluation process as a fatal flaw of the Report particularly in light of the importance of the recommendations for public policy and the number of individuals, both men and women, that will be affected.

Other Considerations

Another concerning aspect of the Report is the lack of a coherent framework to evaluate coverage apart from the evidence regarding clinical efficacy.

Although coverage determinations were not explicitly part of the committee's charge, it is nevertheless difficult to ignore the fact that the committee's recommendations will have important implications for coverage considerations. Thus while the lack of a theoretical or conceptual framework to examine coverage decisions can perhaps be forgiven, it is clear that the "life course" model put forth in the Report does not lend itself to the consideration of coverage decisions. I describe one potential framework below that could inform such thinking around coverage determinations.

The ACA law requires coverage by private insurers of all USPSTF A and B recommendations. The USPSTF process of evidence review represents a "gold standard" based on a critical and scholarly review of all extant literature and therefore is the bar the committee should have aspired to in basing its recommendations to the Secretary. That said, the clinical recommendations from the USPSTF were never intended to provide a basis for insurance coverage determinations; they are intended as guides to physician practice. Given the previous role of the USPSTF it is worth noting that basing coverage decisions categorically on USPSTF recommendations has the potential to jeopardize the objectivity and scientific integrity of the USPSTF review process.

In contrast, while Bright Futures is a body aimed at influencing clinical practice, the evidence bar for its recommendations is considerably lower than that of the USPSTF Recommendations are considered "evidence-informed" and rely heavily on expert opinion rather than systemic, critical reviews of the literature. This is troubling given the important

public policy consequences that will now result from Bright Futures recommendations.

Additions to the Update Recommendations

There are reasons to support the framework for future evaluation of preventive services in the Report (Chapter 6). The proposed framework crucially recognizes the importance of separating the scientific objective of establishing the effectiveness and potentially the cost effectiveness of preventive services from the policy decision regarding coverage of services. This dissent advocates for a more concrete structure based on sound public policy principles to frame both the evidence review and coverage decision for specific preventive services for women.

A highly regarded framework to examine coverage decisions of preventive services in an insurance context was developed more than twenty years ago by Pauly and Held (1990). The authors consider coverage decisions for a hypothetical preventive service that is presumed to reduce the probability of a covered and potential costly healthcare treatment episode (for example, inpatient treatment of a preventable disease outcome). More formally, if one assumes a preventive service, S, that costs P is available that when administered changes the probability from p_n to p_y of experiencing an inpatient event with cost E, the following can be observed:

1. If $p_n > p_y$ the service is effective in prevention as the treatment S reduces the probability of experiencing the negative outcome; this represents the minimum necessary threshold for which "preventive" needs to be defined.

2. If $(p_n - p_y)E > P$ the service is "cost effective"[1] in that the cost associated with the relative reduction in the probability of the negative outcome exceeds the cost of the treatment S; this is a potentially high bar but an important one for a preventive service.

However, it is important to understand that point (1) and even point (2) do not necessarily imply that first-dollar coverage of preventive services leads to an overall reduction in insurer payments (and hence insurance premiums) as many might assume. Whether coverage of preventive service leads to a reduction in healthcare expenditure depends on the fraction of enrollees using the service before the service becomes covered and the magnitude of the response among enrollees who experience the reduction in out-of-pocket price. This latter point is what Pauly and Held term "benign moral hazard" and it points to a critical parameter of interest as the elasticity or responsiveness of preventive service utilization to the user price for the service. Knowing how elastic patient demand is to preventive services is a critical element to a coverage decision even if one already has good estimates of the effectiveness and cost-effectiveness. This is self-evidently a useful parameter to know for any preventive service because it highlights the impact that first-dollar coverage of

---

[1] It is important to note that the statute rules out cost as a consideration by the committee. Cost is included in the example only to demonstrate that the hypothetical preventive service meets a high bar beyond effectiveness.

the service will have, perhaps in relation to other forms of outreach.

More recently, Pauly and Blavin (2008) incorporate some additional considerations in the wake of research on so-called value-based health insurance designs. First dollar coverage can be justified if enrollees lack information about the benefits of preventive services in order to make correct (or at least fully informed) decisions. Such a determination, however, would depend on the relative efficacy of information provision about the benefits of preventive services versus reducing (or eliminating) cost sharing.

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RESPONSE TO DISSENTING STATEMENT

Linda Rosenstock (Chair), Alfred O. Berg, Claire D. Brindis, Angela Diaz, Francisco Garcia, Kimberly Gregory, Paula A. Johnson, Jeanette H. Magnus, Heidi D. Nelson, Roberta B. Ness, Magda G. Peck, E. Albert Reece, Alina Salganicoff, Sally W. Vernon, and Carol S. Weisman

The dissenting committee member wanted more time and the opportunity to incorporate cost-benefit analysis. At the first committee meeting, it was agreed that cost considerations were outside the

scope of the charge, and that the committee should not attempt to duplicate the disparate review processes used by other bodies, such as the USPSTF, ACIP, and Bright Futures. HHS, with input from this committee, may consider other factors including cost in its development of coverage decisions. The dissent also includes inaccurate statements regarding the committee process and its approach to the committee charge. The committee members' expertise is diverse and while many have different perspectives, no other member shares the opinion that report recommendations were not soundly evidence based.

* * *

JAN 4 2016
OFFICE OF THE CLERK

Nos. 14-1418, -1453, -1505, 15-35, -105, -119, & -191

In the Supreme Court of the United States

DAVID A. ZUBIK, ET AL.
v.
SYLVIA BURWELL, ET AL.

PRIESTS FOR LIFE, ET AL.
v.
DEPARTMENT OF HEALTH & HUMAN SERVICES, ET AL.

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, ET AL.
v.
SYLVIA BURWELL, ET AL.

EAST TEXAS BAPTIST UNIVERSITY, ET AL.
v.
SYLVIA BURWELL, ET AL.

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, ET AL.
v.
SYLVIA BURWELL, ET AL.

SOUTHERN NAZARENE UNIVERSITY, ET AL.
v.
SYLVIA BURWELL, ET AL.

GENEVA COLLEGE
v.
SYLVIA BURWELL, ET AL.

On Writ of Certiorari to the U.S. Courts of Appeals for the Third, Fifth, Tenth and D.C. Circuits

JOINT APPENDIX VOLUME II OF III

PETITIONS FOR CERTIORARI FILED MAY 29, JUNE 9, JUNE 19, JULY 8, JULY 23, JULY 24, AUGUST 11, 2015
CERTIORARI GRANTED NOVEMBER 6, 2015
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TABLE OF CONTENTS

Page

VOLUME I

JOINT APPENDIX MATERIALS FOR NO. 14-1418

Docket Entries, *Zubik v. Sebelius*, No. 2:13-cv-01459 (W.D. Pa.) 1

Docket Entries, *Persico v. Sebelius*, No. 1:13-cv-00303 (W.D. Pa.) 15

Docket Entries, *Zubik v. Sebelius*, No. 14-1377 (3d Cir.) 27

Stipulation of Undisputed Facts 39

Deposition of Cardinal Timothy Dolan 68

Declaration of Susan Rauscher 74

Declaration of David S. Stewart 84

Declaration of Father Ronald Lengwin 92

Declaration of Father Scott Jabo 105

Declaration of Mary Maxwell 112

Declaration of David Murphy 121

Declaration of Father Scott Detisch 131

Additional Stipulated Facts 141

Excerpts from Transcript of Proceedings, Nov. 12, 2013 146

- Excerpts from Testimony of Bishop David A. Zubik 147
- Excerpts from Testimony of Susan Rauscher 158
- Excerpts of Testimony from Bishop Lawrence Persico 164
- Excerpts of Testimony from Father Scott Jabo 173
- Excerpts of Testimony from Mary Maxwell 178

Excerpts from Transcript of Proceedings, Nov. 13, 2013 185

JOINT APPENDIX MATERIALS FOR NO. 14-1453
Docket Entries, *Priests for Life v. U.S. Dep't Health & Human Servs.*, No. 1:13-cv-01261 (D.D.C.) 192
Docket Entries, *Priests for Life v. HHS*, No. 13-15368 (D.C. Cir.) 201
Declaration of Father Frank Pavone and Priests for Life 226
Declaration of Dr. Alveda King 272
Declaration of Janet Morana 280
Declaration of Robert J. Muise 288
Supplemental Declaration of Priests for Life 320
Supplemental Declaration of Robert J. Muise 324
JOINT APPENDIX MATERIALS FOR NO. 14-1505
Docket Entries, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 1:13-cv-01441 (D.D.C.) 339
Docket Entries, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 14-5021 (D.C. Cir.) .. 353
Excerpts from Complaint in *Roman Catholic Archbishop of Washington v. Sebelius*, No. 1:13-cv-01441 (D.D.C.) 358
Affidavit of the Archdiocese of Washington 359
Affidavit of the Consortium of Catholic Academies of the Archdiocese of Washington, Inc. 366
Affidavit of Archbishop Carroll High School 371
Affidavit of Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc. 376
Affidavit of Mary of Nazareth Roman Catholic Elementary School, Inc. 381
Affidavit of Catholic Charities of the Archdiocese of Washington 386
Affidavit of Victory Housing, Inc. 391

Affidavit of Catholic Information Center, Inc. 396
Affidavit of the Catholic University of America... 401
Affidavit of Thomas Aquinas College 407
Comments of the U.S. Conference of Bishops (Mar. 20, 2013)..... 412
Affidavit of Reverend Carter Griffin..... 451
Supplemental Affidavit of the Archdiocese of Washington..... 459
Supplemental Affidavit of the Consortium of Catholic Academies of the Archdiocese of Washington, Inc..... 463
Supplemental Affidavit of Archbishop Carroll High School..... 467
Supplemental Affidavit of Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc..... 471
Supplemental Affidavit of Mary of Nazareth Roman Catholic Elementary School, Inc..... 476
Supplemental Affidavit of Catholic Charities of the Archdiocese of Washington..... 480
Supplemental Affidavit of Victory Housing, Inc..... 484
Supplemental Affidavit of the Catholic Information Center, Inc. 488
Supplemental Affidavit of the Catholic University of America 492
Supplemental Affidavit of Thomas Aquinas College..... 494
Excerpts from District Court Motions Hearing (Nov. 22, 2013)..... 496
Comments of the Archdiocese of Washington (Apr. 4, 2013) 504
Excerpts from Institute of Medicine Report..... 539

VOLUME II
JOINT APPENDIX MATERIALS FOR NO. 15-35
Docket Entries, *East Texas Baptist University v. Sebelius*, No. 4:12-cv-03009 (S.D. Tex.) 586
Docket Entries, *East Texas Baptist University v. Burwell*, No. 14-20112 (5th Cir.) 603
Excerpts from First Amended Complaint in Intervention 636
Declaration of Samuel W Oliver 640
Excerpts from East Texas Baptist University Policy and Procedures Manual 660
East Texas Baptist University Application for Admission 667
Bylaws of East Texas Baptist University 672
Report of the Baptist Faith and Message Study Committee to the Southern Baptist Convention .. 677
East Texas Baptist University Student Handbook, 2013-2014 693
The Ethics and Religious Liberty Commission 697
East Texas Baptist University Healthcare Benefits Plan 703
Congressional Testimony of Samuel W. Oliver 717
Letter from East Texas Baptist University to Kathleen Sebelius, Secretary Department of Health and Human Services 721
Supplemental Declaration of Samuel W Oliver .. 726
Declaration of Dr. Robert B. Sloan 730
Excerpts from Houston Baptist University Website 748
Houston Baptist University Student Handbook, 2012-2013 751
The Ten Pillars: A 12 Year Vision for the Future of Houston Baptist University 760
Summary Plan Information 764

Preventive Care Schedule 772
"*Your* GuideStone Financial Resources" Pamphlet 779
Guidestone, PPACA Overview 784
Supplemental Declaration of Robert B. Sloan 789
Declaration of Jeffrey K. Jue 795
Charter Excerpts 811
JOINT APPENDIX MATERIALS FOR NO. 15-105
Docket Entries, Little Sisters of the Poor Home for the Aged, Denver, Colorado v. Sebelius, No. 1:13-cv-02611 (D. Colo.) 818
Docket Entries, *Reaching Souls International Inc. v. Sebelius*, No. 5:13-cv-01092 (W.D. Okla.) .. 836
Docket Entries, *Little Sisters of the Poor v. Burwell*, No. 13-1540 (10th Cir.) 843
Docket Entries, *Reaching Souls International v. Burwell*, No. 14-6028 (10th Cir.) 872
HRSA Web Page 897
FDA contraceptive guide 903
Press Release, Kathleen Sebelius, Health and Human Services Secretary, Jan. 20, 2012 934
LSP Comment on Proposed Rulemaking (Apr. 8, 2013) 937
Statement of the Little Sisters of the Poor on the HHS Mandate (Mar. 1, 2012) 945
Little Sisters of the Poor Mission, Vision, and Values, 2012 952
Declaration of Adèle A. Keim 954
Screenshots of government grandfathered information 956
CMS.gov screenshots 969
Estimate of small employers in United States 973
Declaration of Mother Loraine Marie Clare Maguire 975

Declaration of Brother Michael Quirk 991
United States Conference of Catholic Bishops, Ethical & Religious Directives for Catholic Healthcare Services..... 1015
Government's Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction 1060
Supplemental Declaration of Mother Loraine Marie Clare Maguire..... 1085
Supplemental Declaration of Brother Michael Quirk..... 1092
Communication between White House and IRS re: Entities Eligible 1099

VOLUME III
Second Supplemental Declaration of Brother Michael Quirk (Nov. 22, 2013) 1107
Deposition of Gary M. Cohen 1110
Original EBSA Form 700 1113
Church Alliance Comments on Proposed Rulemaking 1117
Excerpt from Government Reply in Support of Motion to Dismiss or for Summary Judgment ... 1160
Excerpts of Transcript of Proceeding (Dec. 16, 2013) 1163
Declaration of Timothy E. Head 1171
Declaration of Joshua Wells 1190
Declaration of David Armstrong 1202
Declaration of Joseph Ormont 1215
Supplemental Declaration of Timothy E. Head 1223
JOINT APPENDIX MATERIALS FOR NO. 15-119
Docket Entries, *Southern Nazarene University v. Sebelius*, No. 5:13-cv-01015 (W.D. Okla.) 1286
Docket Entries, *Southern Nazarene University v. Burwell*, No. 14-6026 (10th Cir.) 1293
Excerpts from Complaint in *Southern Nazarene University v. Sebelius*, No. 5:13-cv-01015 (W.D. Okla.) 1312
Joint Stipulation of Facts 1313
JOINT APPENDIX MATERIALS FOR NO. 15-191
Docket Entries, *Geneva College v. Sebelius*, No. 2:12-cv-00207 (W.D. Pa.) 1326
Docket Entries, Geneva College v. Secretary U.S. Department of Health and Human Services, No. 14-6026 (3d Cir.) 1356
Second Amended Complaint 1376
Declaration of Timothy R. Baird 1394

No. 15-35

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:12-cv-03009

East Texas Baptist University et al v. Sebelius et al	Date Filed: 10/09/2012
Assigned to: Judge Lee H Rosenthal	Date Terminated: 01/22/2014
Cause: 28:1343 Violation of Civil Rights	Jury Demand: Plaintiff
	Nature of Suit: 440 Civil Rights: Other
	Jurisdiction: U.S. Government Defendant

* * *

03/08/2013	35	Opposed MOTION to Intervene by Westminster Theological Seminary, filed. Motion Docket Date 3/29/2013. (Attachments: # 1 Exhibit Complaint in Intervention, # 2 Proposed Order)(Wynne, Kenneth) (Entered: 03/08/2013)

* * *

03/28/2013	38	RESPONSE to 35 Opposed MOTION to Intervene filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Kathleen Sebelius, Hilda L. Solis. (Attachments: # 1 Proposed Order Denying Motion to Intervene as Plaintiff)(Pruski, Jacek) (Entered: 03/28/2013)

* * *

04/01/2013	40	Minute entry for proceedings before the Hon. Lee H. Rosenthal. Status conference held on April 1, 2013. The court heard arguments on Westminster Theological Seminary's opposed motion to intervene, (Docket Entry No. 35). The court ordered the parties to file a statement by April 15, 2013 explaining the relationship between Westminster's position and that of East Texas Baptist University, whether the government agrees that the safe harbor applies to Westminster, and how this affects the parties' positions on the appropriateness of intervention. A hearing is set for August 2, 2013, at 10:00 a.m. Appearances: Eric Christopher Rassbach, (by phone) for Pltfs, Jacek Pruski(by phone)/Daniel Hu for the Government and Kenneth Wynne for Intervenor.(Court Reporter: S. Carlisle), filed.(leddins) (Entered: 04/03/2013)
		* * *
04/15/2013	44	RESPONSE *to Directive at April 1 Status Conference*, filed by Westminster Theological Seminary. (Wynne, Kenneth) (Entered: 04/15/2013)
		* * *

04/19/2013	46	STATEMENT *in Response to Court Order* re: 40 Status Conference, by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Kathleen Sebelius, Hilda L. Solis, filed. (Attachments: # 1 Exhibit Declaration of Teresa Miller)(Pruski, Jacek) (Entered: 04/19/2013)
		* * *
05/29/2013	50	WESTMINSTER'S RESPONSE to 46 DEFENDANTS' REPLY TO THE COURT, filed by Westminster Theological Seminary. (gkelner,) (Entered: 05/30/2013)
		* * *
08/06/2013	61	First AMENDED COMPLAINT with Jury Demand against All Defendants filed by East Texas Baptist University, Houston Baptist University.(Rassbach, Eric) (Entered: 08/06/2013)
		* * *
08/30/2013	68	MEMORANDUM AND ORDER entered GRANTING 35 Opposed MOTION to Intervene.(Signed by Judge Lee H Rosenthal) Parties notified.(leddins,) (Entered: 08/30/2013)
08/30/2013	69	MOTION for Preliminary

Injunction, MOTION for Partial Summary Judgment (Motion Docket Date 9/20/2013.) by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Proposed Order)(Rassbach, Eric) (Entered: 08/30/2013)

08/30/2013 70 MEMORANDUM in Support re: 69 MOTION for Preliminary Injunction MOTION for Partial Summary Judgment by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Rassbach, Eric) (Entered: 08/30/2013)

09/03/2013 71 First AMENDED with Jury Demand against All Defendants filed by Westminster Theological Seminary.(Wynne, Kenneth) (Entered: 09/03/2013)

* * *

09/09/2013 75 MOTION for Partial Summary Judgment *and*, MOTION for Preliminary Injunction (Motion Docket Date 9/30/2013.) by Westminster Theological Seminary, filed. (Attachments: # 1 Westminster's Memorandum in Support of Motion for Partial Summary Judgment and Preliminary Injunction, # 2

Exhibit A, # 3 Exhibit B)(Wynne, Kenneth) (Entered: 09/09/2013)

* * *

09/20/2013 78 MOTION to Dismiss (Motion Docket Date 10/11/2013.), MOTION for Summary Judgment by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Jacob Lew, Thomas Perez, Kathleen Sebelius, filed. (Attachments: # 1 Proposed Order)(Pruski, Jacek) (Entered: 09/20/2013)

09/20/2013 79 MEMORANDUM of Law re: 75 MOTION for Partial Summary Judgment *and* MOTION for Preliminary Injunction, 78 MOTION to Dismiss MOTION for Summary Judgment, 69 MOTION for Preliminary Injunction MOTION for Partial Summary Judgment by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Jacob Lew, Thomas Perez, Kathleen Sebelius, filed.(Pruski, Jacek) (Entered: 09/20/2013)

* * *

09/24/2013 82 Brief of Amici Curiae ACLU and ACLU of Texas Opposing Plaintiffs and Intervenor Plaintiffs Motions for Partial

		Summary Judgment and Preliminary Injunction re: 75 MOTION for Partial Summary Judgment *and* MOTION for Preliminary Injunction, 69 MOTION for Preliminary Injunction MOTION for Partial Summary Judgment by ACLU &ACLU OF TX, filed.(gkelner, 4) (Entered: 09/24/2013)
		* * *
10/17/2013	95	RESPONSE in Opposition to 78 MOTION to Dismiss MOTION for Summary Judgment, filed by Westminster Theological Seminary. (Attachments: # 1 Exhibit A)(Wynne, Kenneth) (Entered: 10/17/2013)
10/17/2013	96	MOTION Rule 56(d) Relief by East Texas Baptist University, Houston Baptist University, filed. Motion Docket Date 11/7/2013. (Attachments: # 1 Exhibit A, # 2 Proposed Order)(Rassbach, Eric) (Entered: 10/17/2013)
10/17/2013	97	MEMORANDUM *Reply Memorandum in Support of Motion for Partial Summary Judgment and for Preliminary Injunction and in Opposition to Motion to Dismiss or for Summary Judgment* re: 78 MOTION to Dismiss MOTION for Summary Judgment, 69 MOTION for

		Preliminary Injunction MOTION for Partial Summary Judgment by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit Exhibit D—Declaration of Sandra Namken Mooney)(Rassbach, Eric) (Entered: 10/17/2013)
		* * *
11/04/2013	103	REPLY in Support of 78 MOTION to Dismiss MOTION for Summary Judgment, filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen Sebelius, Hilda L. Solis. (Pruski, Jacek) (Entered: 11/04/2013)
11/06/2013	104	SUPPLEMENT to 95 Response in Opposition to Motion by Westminster Theological Seminary, filed.(Wynne, Kenneth) (Entered: 11/06/2013)
11/07/2013	105	RESPONSE in Opposition to 96 MOTION Rule 56(d) Relief, filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen Sebelius, Hilda L. Solis. (Pruski, Jacek) (Entered: 11/07/2013)
		* * *

11/08/2013	107	BRIEF *Combined Surreply and Notice of Supplemental Authority* re: 78 MOTION to Dismiss MOTION for Summary Judgment, 69 MOTION for Preliminary Injunction MOTION for Partial Summary Judgment by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit Exhibit E—Declaration of Diana M. Verm)(Rassbach, Eric) (Entered: 11/08/2013)

* * *

11/11/2013	113	Minute entry for proceedings before the Hon. Lee H. Rosenthal. Motion hearing held on Monday, November 11, 2013. After hearing from both parties, the court reserved decision on East Texas Baptist University's motion for preliminary injunction and partial summary judgment (Docket Entry No. 69); Westminster Theological Seminary's motion for preliminary injunction and partial summary judgment (Docket Entry No. 75), and the government's motion to dismiss and for summary judgment (Docket Entry No. 78), The court will issue a memorandum and opinion as soon as practicable. As

		stated on the record, the parties are to file supplemental briefing to address the questions the court raised at the hearing. Appearances: Eric Rassbach/Diana Marie Verm for Pltf., Daniel Hu/Jacek Pruski for Defts. And Kenneth Wynne for Westminter.(Court Reporter: C. Barron), filed.(leddins, 4) (Entered: 11/21/2013)
		* * *
11/13/2013	108	REPLY–*Post-Hearing Reply in Support of Preliminary Injunctive Relief*, filed by Westminster Theological Seminary. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Wynne, Kenneth) (Entered: 11/13/2013)
11/14/2013	109	Supplemental MEMORANDUM *and Notice of Supplemental Authority* by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit F, # 2 Exhibit G)(Rassbach, Eric) (Entered: 11/14/2013)
11/15/2013	110	Supplemental RESPONSE *to Questions Posed During Hearing*, filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew,

		Thomas Perez, Kathleen Sebelius, Hilda L. Solis. (Pruski, Jacek) (Entered: 11/15/2013)
11/15/2013	111	MEMORANDUM in Support *Reply Memorandum in Support of* re: 96 MOTION Rule 56(d) Relief by East Texas Baptist University, Houston Baptist University, filed.(Rassbach, Eric) (Entered: 11/15/2013)
11/20/2013	112	SURREPLY to 96 MOTION Rule 56(d) Relief, filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen Sebelius, Hilda L. Solis. (Pruski, Jacek) (Entered: 11/20/2013)
11/21/2013	114	NOTICE *of Supplemental Authority* by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit H)(Rassbach, Eric) (Entered: 11/21/2013)
		* * *
11/26/2013	118	Second SUPPLEMENT to 95 Response in Opposition to Motion by Westminster Theological Seminary, filed. (Attachments: # 1 Exhibit A)(Wynne, Kenneth) (Entered: 11/26/2013)
		* * *
12/02/2013	120	RESPONSE to 114 Notice

		(Other) *of Supplemental Authority*, filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen Sebelius, Hilda L. Solis. (Pruski, Jacek) (Entered: 12/02/2013)
12/05/2013	121	STATEMENT *Supplemental Statement of Facts* re: 69 MOTION for Preliminary Injunction MOTION for Partial Summary Judgment by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit I)(Rassbach, Eric) (Entered: 12/05/2013)
12/12/2013	122	RESPONSE to 121 Statement, *Pls.'Suppl. Stmt. Of Facts*, filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen Sebelius, Hilda L. Solis. (Pruski, Jacek) (Entered: 12/12/2013)
12/17/2013	123	NOTICE *of Supplemental Authority* by East Texas Baptist University, Houston Baptist University, Westminster Theological Seminary, filed. (Attachments: # 1 Exhibit J—

		Supplemental Authority)(Rassbach, Eric) (Entered: 12/17/2013)
12/19/2013	124	NOTICE *of Supplemental Authority* by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit K)(Rassbach, Eric) (Entered: 12/19/2013)
12/19/2013	125	NOTICE *of Supplemental Authority* by Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen Sebelius, Hilda L. Solis, filed. (Attachments: # 1 Exhibit Priests for Life v. HHS–Mem. Op.)(Pruski, Jacek) (Entered: 12/19/2013)
12/19/2013	126	RESPONSE to 123 Notice (Other) *of Supplemental Authority*, filed by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen Sebelius, Hilda L. Solis. (Pruski, Jacek) (Entered: 12/19/2013)
12/20/2013	127	NOTICE *of Supplemental Authority* by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit L)(Rassbach, Eric)

		(Entered: 12/20/2013)
12/23/2013	128	NOTICE *of Further Authority* by Westminster Theological Seminary, filed. (Attachments: # 1 Exhibit A)(Wynne, Kenneth) (Entered: 12/23/2013)
12/24/2013	129	NOTICE *of Supplemental Authority, and Response to Notices of Supplemental Authority* re: 127 Notice (Other), 128 Notice (Other) by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Jacob Lew, Thomas Perez, Kathleen Sebelius, filed. (Attachments: # 1 Exhibit Univ. of Notre Dame v. Sebelius, # 2 Exhibit Archbishop of Washington v. Sebelius)(Pruski, Jacek) (Entered: 12/24/2013)
12/24/2013	130	NOTICE *of Supplemental Authority* by East Texas Baptist University, Houston Baptist University, filed. (Attachments: # 1 Exhibit M—Legatus Opinion, # 2 Exhibit N—Geneva College, # 3 Exhibit O—Southern Nazarene)(Rassbach, Eric) (Entered: 12/24/2013)
12/26/2013	131	RESPONSE to 130 Notice (Other), *of Supplemental Authority*, filed by Department Of Health And Human Services,

		Department Of Labor, Department of Treasury, Jacob Lew, Thomas Perez, Kathleen Sebelius. (Pruski, Jacek) (Entered: 12/26/2013)
12/26/2013	132	NOTICE *of Supplemental Authority* by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Jacob Lew, Thomas Perez, Kathleen Sebelius, filed. (Attachments: # 1 Exhibit Catholic Diocese of Nashville v. Sebelius)(Pruski, Jacek) (Entered: 12/26/2013)
12/27/2013	133	MEMORANDUM AND OPINION. The court grants the plaintiffs motion for summary judgment on the RFRA claim and denies the governments cross-motion for summary-judgment on the RFRA claim. The court denies both the plaintiffs and governments cross-motions on the constitutional claims as moot and without prejudice. The government is enjoined from applying or enforcing the regulations that require the plaintiffs, their health plans, TPAs, or issuers, to provide or execute the self-certification forms that enable or require the TPA or issuer to provide health

		insurance coverage for the plaintiffs employees for FDA-approved emergency contraceptive devices, products, or services under the requirements imposed in 42 U.S.C. § 300gg-13(a)(4), Pub. L. 11 148, § 1563(e)-(f), as well as the application of the penalties found in 26 U.S.C. §§ 4980D &4980H, and 29 U.S.C. § 1132. An order of injunction will separately issue.(Signed by Judge Lee H Rosenthal) Parties notified. (gkelner, 4) (Entered: 12/27/2013)
12/27/2013	134	ORDER OF INJUNCTION. The court has considered the parties cross-motions for summary judgment and grants the plaintiffs motion for summary judgment under the Religious Freedom Restoration Act. The court dismisses all constitutional challenges without prejudice as moot. The court enjoins the defendants as follows: 1. Defendants are enjoined and restrained from enforcing or implementing the challenged regulations, which require the prevailing plaintiffs or, upon plaintiffs execution of a self certification, their insurer or

		third-party administrator to provide, payments for certain approved emergency-contraceptive drugs or devices. 2. Any party may seek modification of this order, by written motion and for good cause. 3. The court retains jurisdiction to enforce this injunction. (Signed by Judge Lee H Rosenthal) Parties notified.(gkelner, 4) (Entered: 12/27/2013)
01/17/2014	135	Joint MOTION for Entry of Order re: by East Texas Baptist University, Houston Baptist University, filed. Motion Docket Date 2/7/2014. (Attachments: # 1 Proposed Order)(Rassbach, Eric) (Entered: 01/17/2014)
01/21/2014	136	ORDER granting 135 Joint MOTION for Entry of Order. (Signed by Judge Lee H Rosenthal) Parties notified.(gkelner, 4) (Entered: 01/22/2014)
		* * *
02/24/2014	139	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Department Of Health And Human Services, Department Of Labor, Department of Treasury, Timothy Geithner, Jacob Lew, Thomas Perez, Kathleen

		Sebelius, Hilda L. Solis, filed. (Pruski, Jacek) (Entered: 02/24/2014)
		* * *
10/07/2015	151	Order of USCA re: 139 Notice of Appeal, ; USCA No. 14-10661. The unopposed motion of the Appellees to stay issuance of the mandate pending the filing of a petition for writ of certiorari is granted., filed.(bcampos, 1) (Entered: 10/07/2015)
11/10/2015	152	The petition for a writ of certiorari filed with the Supreme Court has been granted (USCA No. 14-20112) (USSC No. 15-35), filed. (rnieto, 1) (Entered: 11/10/2015)

U.S. Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 14-20112

EAST TEXAS BAPTIST UNIVERSITY, et al v. BURWELL, et al	Docketed: 02/26/2014 Terminated: 06/22/2015 Nature of Suit: 2440 Other Civil Rights
Originating Judge: Lee H. Rosenthal	Case Type Information: 1) Civil Rights 2) United States
Case: 4:12-cv-3009	

* * *

02/26/2014 CIVIL RIGHTS CASE docketed. NOA filed by Appellants Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew, Mr. Thomas Perez and Ms. Kathleen Sebelius [14-20112] (BCL)

* * *

03/14/2014 PETITION filed by Appellees East Texas Baptist University and Houston Baptist University for hearing en banc [7587385-2]. Date of service: 03/14/2014 via email—Attorney for Appellants: Hu, Pruski; Attorney for Appellees: Keller, Rassbach, Wynne [14-20112] REVIEWED AND/OR EDITED. [7587385-3]. [14-20112] (SUBMIT TO SCREENING JUDGE AND EN BANC COURT) (Eric C. Rassbach)

03/17/2014 MOTION filed by Appellants Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew, Mr. Thomas Perez and Ms. Kathleen Sebelius to consolidate cases Nos. 14-10241, 14-20112, 14-40212, to file a lesser number of briefs and appendices [7588553-3], for assignment of same panel [7588553-4]. Date of service: 03/17/2014 via email Attorney for Appellants: Hu, Jed, Klein, Pruski; Attorney for Appellees: Keller, Rassbach, Verm, Wynne [14-20112] (Adam Craig Jed)

* * *

03/31/2014 RESPONSE/OPPOSITION filed by East Texas Baptist University and Houston Baptist University in opposition [7599563-1] to the motion to consolidate cases filed by Appellants Department of Labor, Ms. Kathleen Sebelius, Department of Health and Human Services, Department of Treasury, Mr. Thomas Perez and Mr. Jacob Lew in 14-20112 [7588553-2], motion to file a lesser number of briefs and appendices filed by Appellants Department of Labor, Ms. Kathleen Sebelius, Department of Health and Human Services, Department of Treasury, Mr. Thomas Perez and Mr. Jacob Lew in 14-20112 [7588553-3], motion for assignment to same panel

filed by Appellants Department of Labor, Ms. Kathleen Sebelius, Department of Health and Human Services, Department of Treasury, Mr. Thomas Perez and Mr. Jacob Lew in 14-20112 [7588553-4] Date of Service: 03/31/2014 via email—Attorney for Appellants: Jed, Klein; Attorney for Appellees: Rassbach, Verm, Wynne. [14-20112] (Eric C. Rassbach)

* * *

04/07/2014 REPLY filed by Appellants Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew, Mr. Thomas Perez and Ms. Kathleen Sebelius [7605007-1] to the response/opposition filed by Appellees East Texas Baptist University and Houston Baptist University in 14-20112 [7599563-2]. Date of Service: 04/07/2014 via email—Attorney for Appellants: Hu, Jed, Klein, Pruski; Attorney for Appellees: Keller, Rassbach, Verm, Wynne. [14-20112] (Adam Craig Jed)

04/28/2014 COURT ORDER filed granting Appellants' motion to consolidate appeal nos. 14-40212, 14-20112, and 14-10241 Judge(s): JLD. [14-20112, 14-10241, 14-40212] (CAG)

* * *

06/26/2014 OPPOSED MOTION filed by Appellants Mr. Jacob J. Lew, Mr.

Thomas Perez, Ms. Kathleen Sebelius, HHS, LABR and TREA to consolidate cases 14-10661, 14-10241, 14-20112; 14-40212. Date of service: 06/26/2014 via US mail—Attorney for Appellants: Hu, Humphreys, Pruski; email Attorney for Appellants: Jed, Klein, Nemeroff; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Keller, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-10241, 14-20112, 14-40212] REVIEWED AND/OR EDITED. MOTION to consolidate cases 14-20112, 14-10241, 14-40212, 14-10661 for briefing and oral argument purposes. Date of service: 06/26/2014 Response/Opposition due on 07/10/2014 [14-10241, 14-20112, 14-40212] (Patrick George Nemeroff)

06/30/2014 RESPONSE/OPPOSITION filed by Westminster Theological Seminary Date of Service: 06/30/2014 via US mail—Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy; email—Attorney for Appellants: Jed, Klein, Nemeroff; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Keller, Marinkovic, Rassbach, Verm, Wynne. [14-20112] (Kenneth Reed Wynne)

07/02/2014 REPLY filed by Appellants Mr. Jacob J. Lew, Mr. Thomas Perez, Ms. Kathleen Sebelius, HHS, LABR and TREA Date of Service: 07/02/2014 via US mail—Attorney for Appellants: Hu, Humphreys, Pruski; email—Attorney for Appellants: Jed, Klein, Nemeroff; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Keller, Marinkovic, Murphy, Rassbach, Verm, Wynne. [14-20112] (Patrick George Nemeroff)

07/03/2014 RESPONSE/OPPOSITION filed by East Texas Baptist University and Houston Baptist University *in opposition* Date of Service: 07/03/2014 via email—Attorney for Appellants: Jed, Klein, Nemeroff; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Keller, Marinkovic, Rassbach, Verm, Wynne. [14-20112] (Eric C. Rassbach)

* * *

07/21/2014 COURT ORDER granting motion to consolidate cases filed by Appellants LABR, TREA, HHS, Ms. Kathleen Sebelius, Mr. Thomas Perez and Mr. Jacob J. Lew in 14-10661 Judge(s): JLD. [14-20112, 14-10241, 14-10661, 14-40212] (ADB)

* * *

09/16/2014 APPELLANT'S BRIEF FILED by Department of Health and Human Services, Department of Labor,

Department of Treasury, Mr. Jacob Lew, Mr. Thomas Perez and Ms. Kathleen Sebelius in 14-20112, Mr. Jacob J. Lew, Mr. Thomas Perez, Ms. Kathleen Sebelius, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661. Date of service: 09/16/2014 via email—Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Keller, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED. Brief NOT Sufficient as it requires a cover w/ Case No. & Caption. Additionally the Brief requires an appearance form is need from counsel signing the brief. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0 A/Pet's Brief deadline satisfied. Sufficient Brief due on 09/30/2014 for Appellants Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Jacob J. Lew, Thomas Perez, United States Department Of Health And Human Services, United States Department of Labor, United States Department of Treasury, Department

of Health and Human Services, Department of Labor, Department of Treasury and Jacob Lew.. Appellee's Brief due on 10/20/2014 for Appellees University of Dallas, Catholic Charities, Diocese of Fort Worth, Incorporated, Our Lady of Victory Catholic School, Roman Catholic Diocese of Fort Worth, East Texas Baptist University, Houston Baptist University, Westminster Theological Seminary, Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont [14-20112, 14-10241, 14-10661, 14-40212] (Megan Barbero)

09/16/2014 RECORD EXCERPTS FILED by Appellants Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew, Mr. Thomas Perez and Ms. Kathleen Sebelius in 14-20112, Appellants Mr. Jacob J. Lew, Mr. Thomas Perez, Ms. Kathleen Sebelius, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661. Date of service: 09/16/2014 via email—Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Keller, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR

EDITED. Record Excerpts NOT Sufficient as they require a correct captiont. Optional contents exceed page limitations by 21 pages. # of Copies Provided: 0 Sufficient Record Excerpts due on 09/30/2014 for Appellants Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Jacob J. Lew, Thomas Perez, United States Department Of Health And Human Services, United States Department of Labor, United States Department of Treasury, Department of Health and Human Services, Department of Labor, Department of Treasury and Jacob Lew [14-20112, 14-10241, 14-10661, 14-40212] (Megan Barbero)

* * *

09/18/2014 BRIEF MADE SUFFICIENT filed by Appellants LABR, TREA, HHS, Ms. Kathleen Sebelius, Mr. Thomas Perez and Mr. Jacob J. Lew, Appellants Department of Labor, Ms. Kathleen Sebelius, Department of Health and Human Services, Department of Treasury, Mr. Thomas Perez and Mr. Jacob Lew in 14-20112, 14-10241, 14-40212, 14-10661 Sufficient Brief deadline satisfied. Paper Copies of Brief due on 09/23/2014 for Appellants Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Jacob J. Lew, Thomas Perez,

United States Department Of Health And Human Services, United States Department of Labor, United States Department of Treasury, Department of Health and Human Services, Department of Labor, Department of Treasury and Jacob Lew. [14-20112, 14-10241, 14-10661, 14-40212] (BCL)

* * *

10/02/2014 AMICUS CURIAE BRIEF FILED by American Civil Liberties Union, American Civil Liberties Union of Texas and Americans United for Separation of Church and State in 14-20112, 14-10241, 14-40212, 14-10661. Consent is Not Necessary as a Motion has been Granted. # of Copies Provided: 0. Paper Copies of Brief due on 10/07/2014 for Amici Curiae American Civil Liberties Union, American Civil Liberties Union of Texas and Americans United for Separation of Church and State. [14-20112, 14-10241, 14-10661, 14-40212] (CAG)

* * *

10/06/2014 RECORD EXCERPTS MADE SUFFICIENT filed by Appellants LABR, TREA, HHS, Ms. Kathleen Sebelius, Mr. Thomas Perez and Mr. Jacob J. Lew, Appellants Department of Labor, Ms. Kathleen Sebelius, Department of Health and Human Services, Department of Treasury, Mr.

Thomas Perez and Mr. Jacob Lew in 14-20112, 14-10241, 14-40212, 14-10661 Sufficient Record Excerpts deadline satisfied. Paper Copies of Record Excerpts due on 10/14/2014 for Appellants Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Jacob J. Lew, Thomas Perez, United States Department Of Health And Human Services, United States Department of Labor, United States Department of Treasury, Department of Health and Human Services, Department of Labor, Department of Treasury and Jacob Lew. [14-20112, 14-10241, 14-10661, 14-40212] (BCL)

* * *

10/21/2014 CLERK ORDER filed granting appellees' unopposed motion to partially dismiss appeal as to Appellees Roman Catholic Diocese of Fort Worth and Our Lady of Victory Catholic School Involvement terminated for Appellees Roman Catholic Diocese of Fort Worth and Our Lady of Victory Catholic School in 14-10661. [14-10661] (CAG)

* * *

11/19/2014 APPELLEE'S BRIEF FILED by Appellees East Texas Baptist University and Houston Baptist University. Brief NOT Sufficient as it requires a corrected caption.

Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0. E/Res's Brief deadline satisfied. Sufficient Brief due on 12/04/2014 for Appellees East Texas Baptist University and Houston Baptist University. [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED—The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by Appellees East Texas Baptist University and Houston Baptist University. Date of service: 11/19/2014 via email—Attorney for Amicus Curiae: Khan; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Eric C. Rassbach)

11/19/2014 RECORD EXCERPTS FILED by Appellees East Texas Baptist University and Houston Baptist University. Record Excerpts NOT Sufficient as they require corrected caption, tabs, and a certificate of service. Instructions to Attorney: PLEASE READ THE ATTACHED

NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT # of Copies Provided: 0. Sufficient Record Excerpts due on 12/04/2014 for Appellees East Texas Baptist University and Houston Baptist University [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED—The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellees East Texas Baptist University and Houston Baptist University. Date of service: 11/19/2014 via email—Attorney for Amicus Curiae: Khan; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Eric C. Rassbach)

11/19/2014 APPELLEE'S BRIEF FILED by Appellee University of Dallas in 14-10241, Appellees Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont in 14-40212, Appellee Catholic Charities, Diocese of Fort Worth, Incorporated in 14-10661. # of Copies Provided: 0. Paper Copies of Brief due on 11/25/2014 for Appellees University of Dallas, Catholic Charities, Diocese of

Fort Worth, Incorporated, Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont. E/Res's Brief deadline satisfied. Reply Brief due on 12/08/2014 for Appellants Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Jacob J. Lew, Thomas Perez, United States Department Of Health And Human Services, United States Department of Labor, United States Department of Treasury, Department of Health and Human Services, Department of Labor, Department of Treasury and Jacob Lew. [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED—The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by Appellee University of Dallas in 14-10241, Appellees Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont in 14-40212, Appellee Catholic Charities, Diocese of Fort Worth, Incorporated in 14-10661 *14-20112, 14-10241, 14-40212.* Date of service: 11/19/2014 via email—Attorney for Amicus Curiae: Khan; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic,

Rassbach, Verm, Wynne; US mail—Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Thomas F Allen Jr.)

11/19/2014 RECORD EXCERPTS FILED by Appellee University of Dallas in 14-10241, Appellees Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont in 14-40212, Appellee Catholic Charities, Diocese of Fort Worth, Incorporated in 14-10661. # of Copies Provided: 0. Paper Copies of Record Excerpts due on 11/25/2014 for Appellees University of Dallas, Catholic Charities, Diocese of Fort Worth, Incorporated, Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont. [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED—The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellee University of Dallas in 14-10241, Appellees Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont in 14-40212, Appellee Catholic Charities, Diocese of Fort Worth, Incorporated in 14-10661. *14-20112, 14-10241, 14-40212* Date of service: 11/19/2014 via email—Attorney for Amicus Curiae:

Khan; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne; US mail—Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Thomas F. Allen Jr.)

11/20/2014 BRIEF MADE SUFFICIENT filed by Appellee Westminster Theological Seminary in 14-20112 Sufficient Brief deadline satisfied. Paper Copies of Brief due on 11/25/2014 for Appellee Westminster Theological Seminary. [14-20112, 14-10241, 14-10661, 14-40212] (CAG)

11/21/2014 AMICUS CURIAE BRIEF FILED by National Association of Catholic Nurses, National Association of Pro Life Nurses, Alabama Physicians for Life, National Catholic Bioethics Center, Catholic Medical Association, Christian Medical Association, American Association of Pro-Life Obstetricians & Gynecologists and Association of American Physicians & Surgeons in 14-20112, 14-10241, 14-40212, 14-10661. The Consent is Included in the Brief. # of Copies Provided: 0. Paper Copies of Brief due on 12/01/2014 for Amici Curiae Association of American Physicians &

Surgeons, American Association of Pro-Life Obstetricians & Gynecologists, Christian Medical Association, Catholic Medical Association, National Catholic Bioethics Center, Alabama Physicians for Life, National Association of Pro Life Nurses and National Association of Catholic Nurses. [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED—The original text prior to review appeared as follows: AMICUS CURIAE BRIEF FILED by Assn of American Physicians & Surgeons, American Assn of Pro-Life Obstetricians & Gynecologists, Christian Medical Assn, Catholic Medical Assn, Physicians for Life, Nat'l Assn of Pro Life Nurses, Nat'l Assn of Cath. Nurses, The Nat'l Cath. Bioethics Ctr. Date of service: 11/21/2014 via email—Attorney for Amicus Curiae: Khan; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne; US mail—Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Mailee Rebecca Smith)

* * *

11/21/2014 BRIEF MADE SUFFICIENT filed by Appellees East Texas Baptist University and Houston Baptist University in 14-20112, 14-10241, 14-40212, 14-10661. Sufficient Brief deadline satisfied. Paper Copies of Brief due on 12/01/2014 for Appellees East Texas Baptist University and Houston Baptist University. [14-20112, 14-10241, 14-10661, 14-40212] (CAG)

11/21/2014 RECORD EXCERPTS MADE SUFFICIENT filed by Appellees East Texas Baptist University and Houston Baptist University in 14-20112, 14-10241, 14-40212, 14-10661 Sufficient Record Excerpts deadline satisfied. Paper Copies of Record Excerpts due on 12/01/2014 for Appellees East Texas Baptist University and Houston Baptist University. [14-20112, 14-10241, 14-10661, 14-40212] (CAG)

* * *

11/25/2014 AMICUS CURIAE BRIEF FILED by Liberty, Life, and Law Foundation in 14-20112, 14-10241, 14-40212, 14-10661. The Consent is Included in the Brief. Brief NOT Sufficient as it requires an Appearance Form from counsel signing the brief. # of Copies Provided: 0. Appearance Form due on 12/10/2014 for Amicus Curiae Liberty, Life, and Law Foundation. Paper Copies of Brief due on 12/01/2014 for Amicus Curiae Liberty, Life, and Law

Foundation. [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED—The original text prior to review appeared as follows: AMICUS CURIAE BRIEF FILED by Liberty Life and Law Foundation. Date of service: 11/25/2014 via email—Attorney for Amicus Curiae: Khan; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Deborah Jane Dewart)

* * *

12/17/2014 APPELLANT'S REPLY BRIEF FILED. Brief NOT Sufficient as it requires corrected caption. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0. Reply Brief deadline satisfied. Sufficient Brief due on 01/02/2015 for Appellants Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Jacob J. Lew, Thomas Perez, United States Department Of Health And Human Services, United States Department of Labor, United States Department of Treasury, Department

of Health and Human Services, Department of Labor, Department of Treasury and Jacob Lew. [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Ms. Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew and Mr. Thomas Perez in 14-20112, Ms. Sylvia Matthews Burwell, Secretary, Department of Health and Human Services, Mr. Jacob J. Lew, Mr. Thomas Perez, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661 Date of service: 12/17/2014 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Joshua Marc Salzman)

* * *

12/19/2014 BRIEF MADE SUFFICIENT filed by Appellants LABR, TREA, HHS, Mr. Thomas Perez, Mr. Jacob J. Lew and Ms. Sylvia Mathews Burwell,

Secretary, Department of Health and Human Services, Appellants Department of Labor, Department of Health and Human Services, Department of Treasury, Mr. Thomas Perez, Mr. Jacob Lew and Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services in 14-20112, 14-10241, 14-40212, 14-10661 Sufficient Brief deadline satisfied. Paper Copies of Brief due on 12/24/2014 for Appellants Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Jacob J. Lew, Thomas Perez, United States Department Of Health And Human Services, United States Department of Labor, United States Department of Treasury, Department of Health and Human Services, Department of Labor, Department of Treasury and Jacob Lew. [14-20112, 14-10241, 14-10661, 14-40212] (CAG)

* * *

01/19/2015 COURT ORDER denying motion for hearing en banc filed by Appellees East Texas Baptist University and Houston Baptist University in 14-20112. [14-20112, 14-10241, 14-10661, 14-40212] (ADB)

* * *

02/09/2015 LETTER filed by Appellees East Texas Baptist University and Houston Baptist University Notice of

Supplemental Authority Under Rule 28j. Date of Service: 02/09/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne; US mail Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Eric C. Rassbach)

02/11/2015 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew and Mr. Thomas Perez in 14-20112, Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Mr. Jacob J. Lew, Mr. Thomas Perez, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661 Date of Service: 02/11/2015 via email - Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic,

Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Adam Craig Jed)

02/16/2015 RESPONSE filed by Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew and Mr. Thomas Perez in 14-20112, Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Mr. Jacob J. Lew, Mr. Thomas Perez, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661 to the 28j letter filed by Appellees East Texas Baptist University and Houston Baptist University in 14-20112, 14-10241, 14-40212, 14-10661 Date of Service: 02/16/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Adam Craig Jed)

02/23/2015 RESPONSE filed by Appellees East Texas Baptist University and Houston Baptist University to the 28j letter filed by Appellants LABR, TREA,

HHS, Mr. Thomas Perez, Mr. Jacob J. Lew and Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Appellants Department of Labor, Department of Health and Human Services, Department of Treasury, Mr. Thomas Perez, Mr. Jacob Lew and Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services in 14-20112, 14-10241, 14-40212, 14-10661 Date of Service: 02/13/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne; US mail Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Diana Marie Verm)

02/23/2015 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellees East Texas Baptist University and Houston Baptist University Date of Service: 02/23/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic,

Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Diana Marie Verm)

* * *

03/09/2015 RESPONSE filed by Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew and Mr. Thomas Perez in 14-20112, Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Mr. Jacob J. Lew, Mr. Thomas Perez, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661 to the 28j letter filed by Appellees East Texas Baptist University and Houston Baptist University in 14-20112, 14-10241, 14-40212, 14-10661 Date of Service: 03/09/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Adam Craig Jed)

03/09/2015 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellees East Texas Baptist University and Houston

Baptist University Date of Service: 03/09/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Eric C. Rassbach)

03/10/2015 RESPONSE filed by Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew and Mr. Thomas Perez in 14-20112, Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Mr. Jacob J. Lew, Mr. Thomas Perez, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661 to the 28j letter filed by Appellees East Texas Baptist University and Houston Baptist University in 14-20112, 14-10241, 14-40212, 14-10661 Date of Service: 03/10/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Hu, Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic,

Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Adam Craig Jed)

* * *

04/02/2015 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellees East Texas Baptist University and Houston Baptist University Date of Service: 04/02/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Eric C. Rassbach)

04/06/2015 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew and Mr. Thomas Perez in 14-20112, Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Mr. Jacob J. Lew, Mr. Thomas Perez, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661 Date of Service: 04/06/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Hu,

Humphreys, Jed, Klein, Nemeroff, Pruski, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Murphy, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Joshua Marc Salzman)

04/07/2015 ORAL ARGUMENT HEARD before Judges Reavley, Smith, Graves. Arguing Person Information Updated for: Thomas F Allen, Jr. arguing for Appellee University of Dallas; Arguing Person Information Updated for: Thomas F. Allen, Jr. arguing for Appellee Diocese of Fort Worth Catholic Charities, Incorporated; Arguing Person Information Updated for: Thomas F Allen, Jr. arguing for Appellee Incorporated Catholic Charities of Southeast Texas; Arguing Person Information Updated for: Adam Craig Jed arguing for Appellant Secretary Burwell, Department of Health and Human Services, Appellant Jacob J. Lew, Appellant Thomas Perez, Appellant United States Department Of Health And Human Services, Appellant United States Department of Labor; Arguing Person Information Updated for: Adam Craig Jed arguing for Appellant Secretary Burwell, Department of Health and Human Services; Arguing Person Information Updated for: Adam Craig Jed arguing

for Appellant Secretary Burwell, Department of Health and Human Services, Appellant Department of Health and Human Services, Appellant Department of Labor, Appellant Department of Treasury, Appellant Jacob Lew; Arguing Person Information Updated for: Adam Craig Jed arguing for Appellant Secretary Burwell, Department of Health and Human Services; Arguing Person Information Updated for: Eric C. Rassbach arguing for Appellee East Texas Baptist University and Houston Baptist University; Arguing Person Information Updated for: Kenneth Reed Wynne arguing for Appellee Westminster Theological Seminary [14-20112, 14-10241, 14-10661, 14-40212] (PFT)

04/27/2015 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellees East Texas Baptist University and Houston Baptist University Date of Service: 04/27/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Eric C. Rassbach)

05/21/2015 SUPPLEMENTAL AUTHORITIES

(FRAP 28j) FILED by Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Department of Health and Human Services, Department of Labor, Department of Treasury, Mr. Jacob Lew and Mr. Thomas Perez in 14-20112, Appellants Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Mr. Jacob J. Lew, Mr. Thomas Perez, HHS, LABR and TREA in 14-10241, 14-40212, 14-10661 Date of Service: 05/21/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne; US mail Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Adam Craig Jed)

06/03/2015 RESPONSE filed by Appellees East Texas Baptist University and Houston Baptist University to the 28j letter filed by Appellants LABR, TREA, HHS, Mr. Thomas Perez, Mr. Jacob J. Lew and Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services, Appellants Department of Labor, Department of Health and Human Services,

Department of Treasury, Mr. Thomas Perez, Mr. Jacob Lew and Ms. Sylvia Mathews Burwell, Secretary, Department of Health and Human Services in 14-20112, 14-10241, 14-40212, 14-10661 Date of Service: 06/03/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne [14-20112, 14-10241, 14-10661, 14-40212] (Eric C. Rassbach)

06/22/2015 PUBLISHED OPINION FILED. [14-10241 Reversed 14-10661 Reversed 14-20112 Reversed 14-40212 Reversed] Judge: TMR , Judge: JES , Judge: JEG Mandate pull date is 08/13/2015 [14-20112, 14-10241, 14-10661, 14-40212] (JMA)

06/22/2015 JUDGMENT ENTERED AND FILED. [14-20112] (JMA)

06/22/2015 JUDGMENT ENTERED AND FILED. [14-10241] (JMA)

06/22/2015 JUDGMENT ENTERED AND FILED. [14-40212] (JMA)

06/22/2015 JUDGMENT ENTERED AND FILED. [14-10661] (JMA)

06/30/2015 MOTION to stay issuance of the mandate [7950541-2]. Mandate pull date canceled. Date of service: 06/30/2015. Response/Opposition due

on 07/10/2015. [14-20112] REVIEWED AND/OR EDITED The original text prior to review appeared as follows: MOTION filed by Appellee Westminster Theological Seminary to stay issuance of the mandate [7950541-2]. Date of service: 06/30/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic, Rassbach, Verm, Wynne; US mail Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Kenneth Reed Wynne)

07/02/2015 COURT ORDER denying without prejudice as unnecessary the motion to stay issuance of the mandate filed by Appellee Westminster Theological Seminary. The mandates are not scheduled to issue until August 14, 2015. Moreover, under FRAP 40(a)(1), any request for rehearing is not due until 45 days from the date of the decision. in 14-20112 Judge(s): JES. [14-20112, 14-10241, 14-10661, 14-40212] (ADB)

07/14/2015 SUPREME COURT NOTICE that petition for writ of certiorari [7960082-2] was filed by Appellees East Texas

Baptist University, Houston Baptist University and Westminster Theological Seminary on 07/08/2015. Supreme Court Number: 15-35. [14-20112] (CAV)

* * *

10/06/2015 UNOPPOSED JOINT APPELLEES' MOTION filed by Appellees East Texas Baptist University, Houston Baptist University and Westminster Theological Seminary in 14-20112 to stay issuance of the mandate [8028135-2] Mandate pull date canceled.. Case Management deadline updated to 10/13/2015. Date of service: 10/06/2015 [14-20112, 14-10241, 14-10661, 14-40212] REVIEWED AND/OR EDITED The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellee University of Dallas in 14-10241, Appellees Catholic Charities of Southeast Texas, Incorporated and Catholic Diocese of Beaumont in 14-40212, Appellee Catholic Charities, Diocese of Fort Worth, Incorporated in 14-10661 to stay issuance of the mandate [8028135-2]. Date of service: 10/06/2015 via email Attorney for Amici Curiae: Dewart, Khan, Smith; Attorney for Appellants: Barbero, Jed, Klein, Nemeroff, Salzman; Attorney for Appellees: Allen, Cashiola, Crumley, Delaune, Ghorayeb, Marinkovic,

Rassbach, Verm, Wynne; US mail Attorney for Appellants: Hu, Humphreys, Pruski; Attorney for Appellee: Murphy [14-20112, 14-10241, 14-10661, 14-40212] (Thomas F Allen Jr.)

10/07/2015 COURT ORDER granting motion to stay issuance of the mandate pending the filing of a petition for writ of certiorari filed by Appellee University of Dallas, Appellee Catholic Charities, Diocese of Fort Worth, Incorporated, Appellees East Texas Baptist University, Houston Baptist University and Westminster Theological Seminary, Appellees Catholic Diocese of Beaumont and Catholic Charities of Southeast Texas, Incorporated Judge(s): JES. [14-20112, 14-10241, 14-10661, 14-40212] (ADB)

* * *

11/10/2015 SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellees East Texas Baptist University, Houston Baptist University and Westminster Theological Seminary in 14-20112 on 11/06/2015. [8055705-1] [14-20112] (LGL)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EAST TEXAS BAPTIST UNIVERSITY and HOUSTON BAPTIST UNIVERSITY	§	
Plaintiffs	§	CIVIL NO. 4:12-cv-03009
v.	§	Jury Demanded
KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY	§	
Defendants	§	

FIRST AMENDED COMPLAINT IN INTERVENTION

Comes now Plaintiff-in-Intervention, Westminster Theological Seminary ("Westminster"), by and through its attorneys, and states as follows:

SYNOPSIS

Westminster brings this action because the defendants are violating its right under the First Amendment, and related statutes, to the free exercise of religion. The Defendants are infringing that right by requiring Westminster to provide, or cause to be provided, health insurance to its employees that covers, and thereby promotes, its employees' use of drugs that induce abortions (the "Mandate"). That requirement, enforceable by the full weight of the federal

* * *

[Page 6]

FACTUAL ALLEGATIONS

I. Westminster's Religious Beliefs and Practices Related to Insurance for Abortions

20. Plaintiff-in-Intervention, Westminster, is a graduate level Christian seminary located in Glenside, Pennsylvania. Westminster was established in 1929 and is committed to offering a complete seminary education that develops students spiritually, intellectually, and professionally.

21. Faith in Jesus Christ, in His Person, His work and His Word, is central to the educational mission of Westminster. Westminster's mission is "to train

Christian leaders to proclaim the whole counsel of God throughout a changing world."

22. Consistent with its mission, Westminster works to manifest its Christian faith in all aspects of its administration. All Westminster employees profess faith in Jesus Christ, which establishes the essential framework within which members of Westminster both unite in shared beliefs and explore differences.

23. Westminster holds religious beliefs that include traditional Christian teachings on the sanctity of life. Westminster believes and teaches that God creates every human being in His own image and, therefore, that all human life is sacred and precious, from the moment of conception. Westminster therefore believes and teaches that abortion ends a human life and, with rare exceptions, is a sin.

24. Westminster has approximately 620 students.

25. Westminster has approximately 60 full-time and 65 part-time employees.

26. As part of its commitment to Christian education, Westminster also promotes the spiritual and physical well-being and health of its students and employees. This includes provision of generous health insurance for its employees.

27 It is a violation of Westminster's religious beliefs to deliberately provide, or cause to be provided, insurance coverage for drugs, devices, services, or procedures inconsistent with its faith, in particular abortion-inducing drugs, abortion procedures, and related services.

28. It is similarly a violation of Westminster's religious beliefs to deliberately provide health insurance, or cause it to be provided, that would facilitate access to abortion-inducing drugs, abortion procedures, and related services.

29. Westminster has no conscientious objection to providing coverage for nonabortion-inducing contraceptive drugs and devices.

30. The plan year for Westminster's employee insurance plans begins on November 1 of each year.

31. Westminster's employee insurance plans are not eligible for grandfather status. See 45 C.F.R. § 147.140(a)(1)(i), 26 C.F.R. § 54.9815-1251T(a)(1)(i); 29 C.F.R. § 2590.715-1251(a)(1)(i).

II. The Affordable Care Act

32. In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the "Affordable Care Act."

33. The Affordable Care Act regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

34. The Act does not apply equally to all plans.

35. The Act does not apply equally to all insurers.

36. The Act does not apply equally to all individuals.

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

EAST TEXAS BAPTIST UNIVERSITY, and HOUSTON BAPTIST UNIVERSITY., *Plaintiffs,* v. KATHLEEN SEBELIUS, *et al.* *Defendants.*	Civil No. 12-3009 **DECLARATION OF SAMUEL W. OLIVER**

Declaration of Samuel W. Oliver, Ph.D
President, East Texas Baptist University

1. My name is Samuel W Oliver. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current President of East Texas Baptist University ("East Texas Baptist"). I have served as East Texas Baptist's President since June 1, 2009.

2. Like other employees of East Texas Baptist, my family and I depend upon East Texas Baptist's health insurance. I make this declaration not only as a college president, but as an employee, a husband and father. The loss of East Texas Baptist's insurance plan would not only be a professional crisis, but a deep personal concern for my family.

3. I understand that East Texas Baptist will face $8 million in annual fines—along with potential penalties and lawsuits—if it continues to follow its religious beliefs by refusing to offer health insurance that covers abortion-causing drugs and devices. As a college president, I know the kind of strain that this would place on a small liberal arts college. As the president of a Christian college, I know that our responsibility is to the faith that animates us, the reason East Texas Baptist exists.

I. East Texas Baptist's history and beliefs

4. East Texas Baptist is a Christian liberal arts college in Marshall, Texas. East Texas Baptist was founded as the College of Marshall in 1912, and is affiliated with the Baptist General Convention of Texas. East Texas Baptist University Policy and Procedures Manual, 1.1.00 ("Policy Manual," approx. 300 p.). A true and complete copy of the sections of the Policy Manual cited in this Declaration is attached as Exhibit A-1.

5. East Texas Baptist's purpose is "the development of intellectual inquiry, social consciousness, wellness, skills for a contemporary society, global awareness, and Christian character, for we believe that these endeavors prepare students to accept the obligations and opportunities to serve humanity and the Kingdom of God." Ex. A-1 (Policy Manual, 1.1.01).

6. East Texas Baptist's motto is "A World of Opportunity in a Community of Faith." East Texas Baptist Application for Admission ("Application," 4 p.). A true and complete copy of the sections of the

Application cited in this Declaration is attached as Exhibit A-2.

7 Today, East Texas Baptist is a thriving academic community, serving over 1,250 students in 30 undergraduate degree programs and 4 graduate degree programs.

8. Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe upon religious liberty. America's first Baptist leader, Roger Williams, had to flee Massachusetts, where his religious beliefs were not tolerated, and found a colony in Providence, Rhode Island.

9. As Baptists, we are alarmed whenever any religious group's rights are threatened. As the famous Baptist preacher, George W Truett once said, "A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else."

10. East Texas Baptist is governed by a 36-member Board of Trustees a majority of whom are elected by the Baptist General Convention of Texas. All of East Texas Baptist's trustees must be active members of Baptist churches. Bylaws of East Texas Baptist University (as amended Sept. 7, 2012) ("Bylaws"), Arts. 2.01; 2.04. A true and complete copy of the sections of the Bylaws cited in this Declaration is attached as Exhibit A-3.

11. East Texas Baptist's theological heritage is Southern Baptist, and through its affiliation with the Baptist General Convention of Texas, it is also connected with the national Southern Baptist Convention.

12. East Texas Baptist seeks employees "who possess the necessary experience, competence, and capacity to provide leadership compatible with the mission and purpose of the University." Ex. A-1 (Policy Manual, 1.1.02).

13. To that end, it employs "administrators, academic officers, faculty, and staff who have a personal relationship with Christ, who are familiar with truth as revealed in the Bible, who live out this truth in the presence of others, who can create an environment where Christ is lived out in the life of the individual[.]" In both "their initial and continuing employment, administrators, faculty, and staff at East Texas Baptist University are to profess a saving relationship with Jesus Christ and to exhibit a lifestyle that demonstrates that commitment." Ex. A-1 (Policy Manual, 1.1.02).

14. East Texas Baptist welcomes students of all religious backgrounds. But because East Texas Baptist "emphasizes a biblical standard of personal conduct and moral character by all students," every admitted student must agree in writing to "act in accordance with the student handbook." Ex. A-2 (Application at 4). Once enrolled, all full-time students must complete at least six credits of chapel in order to graduate.

15. East Texas Baptist's mission as an academic community is not merely the transmission of information; "as a Baptist university it is committed to the integration of learning and Christian faith in the pursuit of truth." Ex. A-1 (Policy Manual, 1.1.01).

II. East Texas Baptist's beliefs and teachings on abortion

16. East Texas Baptist affirms that Scripture calls Christians to uphold the God-given worth of human beings, as the unique image-bearers of God, from conception to death. As Genesis 1 says, "God created mankind in his own image." Genesis 1:27a (NIV). And as Psalm 139 says, "For you [God] created my inmost being; you knit me together in my mother's womb. all the days ordained for me were written in your book before one of them came to be." Psalm 139:13, 16 (NIV).

17 The 2000 Baptist Faith & Message, a statement of "doctrines essential to the Baptist tradition of faith and practice" puts it this way: "[t]he sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love." 2000 Baptist Faith & Message (8 p.). A true and complete copy of the sections of the 2000 Baptist Faith & Message cited in this Declaration is attached as Exhibit A-4.

18. East Texas Baptist affirms that Scripture condemns the taking of innocent human life (Exodus 20:13 (NIV)) and commands Christians to protect the weak and vulnerable. As the Scriptures say, we are to "[d]efend the weak and the fatherless," "[r]escue the weak and the needy," and "speak up for those who cannot speak for themselves." Psalm 82:3-4b (NIV); Proverbs 31:8a (NIV). And as the 2000 Baptist Faith & Message says, "We should speak on behalf of the

unborn and contend for the sanctity of all human life from conception to natural death." Ex. A-4.

19. East Texas Baptist believes and teaches that abortion ends a human life and is a sin. But it also believes and teaches that it is important to care for every life involved in a crisis pregnancy: the unborn, the mother, the father, and the extended family. Thus, as its student handbook says, East Texas Baptist "supports a culture of life" and seeks to support not only unborn children but also parents facing a crisis pregnancy. 2013-14 East Texas Baptist Student Handbook ("Handbook," approx. 50 p.) at 21. A true and complete copy of the sections of the Handbook cited in this Declaration is attached as Exhibit A-5.

20. It is a violation of East Texas Baptist's teachings and religious beliefs to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services.

21. East Texas Baptist has a sincere religious objection to providing coverage for the emergency contraceptive drugs Plan B and Ella, since it believes those drugs could prevent a human embryo—which it understands to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo. The same objection applies to abortion-causing IUDs.

22. East Texas Baptist considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

23. Therefore it is a violation of East Texas Baptist's teachings and religious beliefs for it to

deliberately fund, sponsor, underwrite, or otherwise facilitate access to Plan B and Ella, or abortion-causing IUDs.

24. It is similarly a violation of East Texas Baptist's religious beliefs to deliberately take any action (including providing access to health insurance) that would facilitate access to abortion-causing drugs. abortion procedures, and related services, even if those items were paid for by an insurer or a third party administrator and not by East Texas Baptist.

25. As the Ethics & Religious Liberty Commission—the public policy arm of the Southern Baptist Convention—has said, requiring employers to provide "free access to abortion-inducing drugs like Ella and Plan B (the "morning after" pill), abortion-causing IUDs, and will force millions of Southern Baptists and other people of faith to violate their God-given and constitutionally-protected freedom of religion and conscience." Ethics & Religious Liberty Commission HHS Fact Sheet ("ERLC Fact Sheet," 2 p.). A true and complete copy of the sections of the ERLC Fact Sheet cited in this Declaration is attached as Exhibit A-6.

26. Consistent with these religious beliefs, East Texas Baptist's employee health insurance plans do not cover abortions or emergency contraception such as Plan B, Ella, or abortion-causing IUDs. East Texas Baptist Healthcare Benefits Plan ("Plan," approx. 100 p.) at 35-36, 38, 47-48. A true and complete copy of the sections of the Plan cited in this Declaration is attached as Exhibit A-7

III. East Texas Baptist's health benefits and practices

27. As part of its religious convictions, East Texas Baptist promotes the well-being and health of its employees. This includes provision of generous health services and health benefits for its employees. *See generally* Ex. A-7.

28. East Texas Baptist has about 227 full-time employees and 56 part-time employees. All of these employees "profess a saving relationship with Jesus Christ" and have agreed to "exhibit a lifestyle that demonstrates that commitment." Ex. A-1 (Policy Manual, 1.1.02). The overwhelming majority of these full-time employees and their families rely upon East Texas Baptist's health benefits.

29. East Texas Baptist is self-insured, and its employees receive health benefits through the East Texas Baptist University Healthcare Benefits Plan, or "Plan." East Texas Baptist is both the Plan Sponsor and the Plan Administrator. Ex. A-7 (Plan at 1).

30. East Texas Baptist has contracted with Mutual Assurance Administrators, Inc. to act as the third party administrator for the Plan. Ex. A-7 (Plan at 1).

31. East Texas Baptist's Plan excludes abortions and emergency contraceptives, including Plan B, Ella, and abortifacient IUDs. Ex. A-7 (Plan at 35-36, 38, 47-48).

32. East Texas Baptist's Plan covers other types of contraceptives. East Texas Baptist does not have religious objections to non-abortion-causing forms of contraception. Ex. A-7 (Plan at 35-36, 38, 47-48).

33. I have been informed that East Texas Baptist's Plan does not meet the definition of a "grandfathered" plan under 42 U.S.C. § 18011 and 75 Fed. Reg. 41,726, 41,731 (2010).

34. East Texas Baptist wishes to continue to provide high-quality, affordable health benefits for its employees. Doing so is consistent with our religious commitment to support our faculty, staff, and their families.

35. If East Texas Baptist had to terminate the Plan and stop offering health benefits, it would be a serious hardship on most faculty and staff, including myself.

36. If East Texas Baptist had to terminate the Plan and stop offering health benefits, it would suffer serious competitive disadvantages in recruiting and retaining faculty and staff.

37 If East Texas Baptist had to terminate the Plan and stop offering health benefits, it is inevitable that, due to the loss of competitive advantage, the quality of its programs and instruction would suffer.

IV. The final form of the Mandate and East Texas Baptist's choice

38. The regulations imposing these requirements ("Mandate") force East Texas Baptist to provide access to abortion-causing drugs, including Plan B, Ella, and abortion-causing IUDs, in violation of East Texas Baptist's religious beliefs. The Mandate also forces East Texas Baptist to provide access to education and counseling concerning abortion that directly conflicts with East Texas Baptist's religious beliefs and teachings. Providing these drugs,

counseling, and education is incompatible and irreconcilable with East Texas Baptist's religious beliefs, express messages, and speech.

39. I am aware of the Mandate's exemption provision for religious employers. East Texas Baptist cannot qualify for this exemption. East Texas Baptist is not a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended. Specifically, it is not a church, an integrated auxiliary of a church, a convention or association of churches, or a religious order.

40. Because East Texas Baptist does not qualify for an exemption to the Mandate, we sincerely hoped the U.S. Department of Health and Human Services ("HHS") would decide to broaden the exemption to cover religious institutions like East Texas Baptist.

41. East Texas Baptist has raised its objections to the Mandate with Congress. On February 16, 2012, I testified before the House Committee on Oversight and Government Reform. In my testimony, I told members of Congress that East Texas Baptist had a religious objection to the Mandate, and that the Mandate violated our religious liberty. I also told them that we were "offended" that HHS said that we weren't "religious enough to have our religious beliefs respected." Oliver Congressional Testimony ("Congressional Testimony," 3 p.). A true and complete copy of the sections of the Congressional Testimony cited in this Declaration is attached as Exhibit A-8.

42. East Texas Baptist has also raised its objections to the Mandate with HHS directly. For

example, in June 2012, East Texas Baptist submitted public comments on the Advance Notice of Proposed Rulemaking ("ANPRM") regarding HHS' proposed amendments to the Mandate (77 Fed. Reg. 16501 (Mar. 21, 2012)).

43. In its ANPRM comments, East Texas Baptist expressed its "grave concern" that the ANPRM "fail[ed] to address the violation of religious liberty at the heart of the HHS [M]andate" in two ways: first, it "creat[ed] different classes of religious groups and assign[ed] each group different rights," and second, it required "accommodated" religious groups to continue to participate in the provision of "morally objectionable drugs." East Texas Baptist implored HHS to broaden the existing "religious employer" exemption to cover East Texas Baptist and similar religious organizations. East Texas Baptist ANPRM Comments ("ANPRM Comments," 3 p.). A true and complete copy of the sections of the ANPRM Comments cited in this Declaration is attached as Exhibit A-9.

44. On July 2, 2013, HHS published its final amendments to the Mandate. 78 Fed. Reg. 39,870 ("Final Rule"). Despite over 400,000 comments filed by East Texas Baptist and others, HHS did not abolish the distinction between churches and religious institutions like East Texas Baptist. Instead, HHS adopted an "accommodation" that requires East Texas Baptist to play a central role in facilitating access to abortion-causing drugs and devices by—among other things—finding and designating a third party administrator to provide abortion-causing drugs and devices on our behalf.

45. The Final Rule also extends the current safe harbor—which is a temporary halt on government (but not private) enforcement of the Mandate—through the end of 2013. 78 Fed. Reg. at 39889.

V. The effects of the "accommodation" on East Texas Baptist

46. An organization is eligible for the accommodation if it (1) "opposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." 78 Fed. Reg. at 39874. I understand that East Texas Baptist is an "eligible organization."

47 Thus, East Texas Baptist would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014, and deliver it to East Texas Baptist's third party administrator, Mutual Assurance Administrators, Inc. 78 Fed. Reg. at 39879. Delivery of the self-certification would trigger an obligation on the part of Mutual Assurance Administrators to begin providing East Texas Baptist employees with payment coverage for abortion-causing drugs and devices. East Texas Baptist would be arranging for this coverage to be "outsourced" to Mutual Assurance Administrators.

48. As a condition of complying with the accommodation, East Texas Baptist would also have to refrain from "[d]irectly or indirectly interfering with a third party administrator's efforts to provide or arrange separate payments for contraceptive services for participants or beneficiaries in the plan"

or "directly or indirectly seeking to influence a third party administrator's decision to provide or arrange such payments." 78 Fed. Reg. at 39879-80.

49. The Mandate assumes that once it has received the self-certification, Mutual Assurance Administrators, Inc. will be willing to make "separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. at 39880.

50. However, I understand that HHS has acknowledged that "there is no legal obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities." 78 Fed. Reg. at 39880.

51. At this time, I do not know whether Mutual Assurance Administrators, Inc. will be willing to carry out the obligations of the Mandate.

52. Thus, the burden remains on East Texas Baptist to find a third party administrator that will agree to providing free access to the same contraceptive and abortifacient services that East Texas Baptist cannot directly provide.

53. East Texas Baptist's religious beliefs preclude it from soliciting, contracting with, or designating a third party to provide these services. From East Texas Baptist's perspective, forcing a third party administrator to provide free access to abortifacient services is no different than directly providing that access. East Texas Baptist cannot outsource its conscience.

54. Moreover, the Mandate requires that, even if the third party administrator consents, the religious organization—via its self-certification—must

expressly designate the third party administrator as "an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries." 78 Fed. Reg. at 39879.

55. The self-certification must specifically notify the third party administrator of its "obligations set forth in the[] final regulations, and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA." 78 Fed. Reg. at 39879.

56. Because the designation makes the third party administrator a plan administrator with fiduciary duties, the payments for contraceptive and abortifacient services would be payments made under East Texas Baptist's health benefits plan.

57 Because East Texas Baptist would be required to identify and designate a third party administrator willing to administer the contraceptive and abortifacient services, East Texas Baptist's religious beliefs preclude it from complying with the accommodation.

58. East Texas Baptist would have to identify their employees to the third party administrator for the distinct purpose of assisting the government's scheme to provide free access to contraceptive and abortifacient services.

59. The third party administrator's obligation to make direct payments for contraceptive services and abortion services would presumably continue only "for so long as the participant or beneficiary remains

enrolled in the plan." 78 Fed. Reg. 39876 (discussing insured plans).

60. Thus, East Texas Baptist would have to coordinate with their third party administrator regarding when it was adding or removing employees and beneficiaries from its healthcare plan and, as a result, from the contraceptive and abortifacient services payment scheme.

61. Third party administrators would be required to notify plan participants and beneficiaries of the contraceptive payment benefit "contemporaneous with (to the extent possible) but separate from, any application materials distributed in connection with enrollment" in a group health plan. 78 Fed. Reg. at 39880.

62. This would also require East Texas Baptist to coordinate the notices with its third party administrators.

63. Thus, even under the accommodation, East Texas Baptist and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to contraceptive and abortifacient services.

64. I understand that the Mandate sets forth complex means through which a third party administrator may seek to recover its costs incurred in making payments for contraceptive and abortifacient services.

65. But I also understand that there is no way to ensure that the cost of administering the abortifacient services would not be passed down to East Texas Baptist through increased fees.

VI. The Mandate's impact on East Texas Baptist

66. East Texas Baptist will be subject to enforcement under the Mandate—enforcement that includes fines, other regulatory penalties, and potential lawsuits—starting on January 1, 2014. The only way East Texas Baptist could avoid those harsh consequences would be to publicly abandon its faith commitments and violate its religious convictions. This is no choice at all, because East Texas Baptist's faith is central to its identity, its mission, and its very existence.

67 If East Texas Baptist chooses to violate the law—by ceasing to offer employee health insurance altogether, or by offering insurance without the objectionable coverage—then it will be penalized with fines of $2000 per full-time employee per year, or roughly $454,000 per year, every year.

68. Although the government has recently announced that it will postpone implementing the annual fine of $2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015.

69. In addition to the $2000 per-employee penalty, East Texas Baptist could also face tax penalties of $100 per day "for each individual to whom such failure relates" 26 U.S.C. § 4980D(b)(1), for offering insurance that fails to comply with the ACA, which would come to $8,285,500 per year for our 227 full-time employees alone.

70. An $8 million fine would be devastating for nearly any college, but it is particularly devastating for a small Christian liberal arts college like East Texas Baptist.

71. I also understand that East Texas Baptist could also face regulatory action and lawsuits under ERISA.

72. The Mandate imposes a burden on East Texas Baptist's employee recruitment and retention efforts by creating uncertainty as to whether East Texas Baptist will be able to offer health benefits beyond 2013.

73. The Mandate places East Texas Baptist at a competitive disadvantage in its efforts to recruit and retain employees.

74. The Mandate forces East Texas Baptist to choose between, on the one hand, violating its religious beliefs, and, on the other hand, incurring substantial fines and terminating its employee health benefits.

75. East Texas Baptist wants to continue to provide high-quality health benefits for its employees. It has no objections to providing almost all of the mandated services, including gestational diabetes screenings, well-woman visits, and most prescription contraceptives. It asks only that it be permitted to follow its beliefs by continuing to refuse to pay for, or provide access to, abortifacients.

76. East Texas Baptist does not have a real choice in this matter. Its religious beliefs are deep, longstanding, and sincere.

VII. The need for immediate action

77. The plan year for East Texas Baptist's health benefits begins on January 1, 2014. East Texas Baptist must begin planning very soon for the 2014 insurance plan year.

78. Every fall, East Texas Baptist works with its third party administrator to set the terms of the Plan for the upcoming year. The process is time consuming: East Texas Baptist's staff must negotiate and work with its third party administrator on plan changes and on the production and distribution of plan materials and employee health benefit cards. This process typically takes East Texas Baptist several months.

79. East Texas Baptist plans to begin the planning process in October, to give itself adequate time to make any necessary changes before the January 2014 plan year begins.

80. East Texas Baptist needs to implement any major changes prior to November 1, 2014, the first date of the two-week open enrollment period for employees and their families.

81. East Texas Baptist needs immediate relief from the Mandate in order to arrange for and continue providing employee health insurance. Delay could lead to a lapse in coverage. Denial of immediate relief will force East Texas Baptist to choose between its religious beliefs and the prospect of crippling fines, regulatory penalties, and lawsuits.

82. The consequences for East Texas Baptist's employees would be severe. If my family's insurance plan is cancelled, we will be forced to seek expensive individual policies on the private market.

83. Currently, the cost of coverage under East Texas Baptist's Plan is significantly lower than the national average—40% lower, by one calculation made by my staff. The additional cost of seeking insurance under the federal health insurance

exchange would be extremely burdensome for our faculty and staff.

84. I have received reports from the Faculty Senate collecting statements from numerous faculty members who have stated that if East Texas Baptist dropped its health benefits, they would be forced to leave East Texas Baptist and find employment elsewhere. The same reports have also stated that dropping insurance would greatly affect East Texas Baptist's ability to recruit new faculty and staff.

85. I have also received reports from individual faculty members, including Dr. Gerald Nissley, Assistant Professor of Psychology and director of our Counseling program. Dr. Nissley reported to me that his wife, a cancer survivor and mother of three children, would likely be classified as part of costly "high-risk" pool in the individual health insurance market. As a result, if East Texas Baptist dropped its health benefits, he told me that he would likely have to seek employment elsewhere in order to cover the cost of health insurance for his wife and children.

86. My answer to Dr. Nissley and his colleagues is that I hope he will not have to make that choice. I hope that we will have relief from the Mandate prior to January 1.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 30, 2013, in Marshall, Texas.

/s/ Samuel W. "Dub" Oliver, Ph.D.

659

Samuel W "Dub" Oliver, Ph.D.

POLICY AND PROCEDURES MANUAL

EAST TEXAS BAPTIST UNIVERSITY

Classification Number: 1.1.00

Page: 1 of 1

Issued: September 3, 1999

Revised: September 7, 2012

EAST TEXAS BAPTIST UNIVERSITY LEGAL BASIS

The legal basis presented below is for use in grant applications, contracts, and other purposes requiring a citation of legal authority.

East Texas Baptist University is a coeducational institution located in the city of Marshall, Texas. A campaign to launch the University was begun in 1911 and the State of Texas granted a charter on October 22, 1912 as College of Marshall, a two-year institution. The first freshman class registered in 1917 In 1924, the college debt was assumed by the Baptist General Convention of Texas with the assistance of the Marshall Chamber of Commerce. The name was changed to East Texas Baptist College in 1944 when it was elevated to four-year status. Accreditation by the Southern Association of Colleges and Schools was granted in 1957 In 1984, a University Charter revision changed the institutional name to East Texas Baptist University.

The University is chartered as a religious, arts and sciences and pre-professional studies institution of higher education. It is a nonprofit corporation operated in affiliation with the Baptist General Convention of Texas. The University holds all of its property in trust for and conducts its affairs in accordance with the policies of the Board of Trustees of East Texas Baptist University. The affairs of the University are governed by a 36 member Board of Trustees elected by the Baptist General Convention of Texas (19 members elected by the Baptist General Convention of Texas; 17 members elected by the East Texas Baptist University Board of Trustees).

Contact for Interpretation: President

This Policy statement supersedes all previous policy statements on this subject.

POLICY AND PROCEDURES MANUAL

EAST TEXAS BAPTIST UNIVERSITY

Classification Number: 1.1.01

Page: 1 of 1

Issued: September 3, 1999

Revised: January 23, 2009

STATEMENT OF

INSTITUTIONAL PURPOSE

East Texas Baptist University is an institution affiliated with the Baptist General Convention of Texas since 1912. Our purpose is the development of intellectual inquiry, social consciousness, wellness, skills for a contemporary society, global awareness, and Christian character, for we believe that these endeavors prepare students to accept the obligations and opportunities to serve humanity and the Kingdom of God. Our primary focus is on quality academic programs in the humanities, natural and social sciences, fine arts, and selected professional areas. We are committed to Christian stewardship and to providing and maintaining an environment conducive to learning, leadership development, and academic excellence. We affirm that the liberal arts form the surest foundation for education and that the Christian faith provides the surest foundation for life.

We strive to serve students of varied ages and of diverse socioeconomic, geographic, cultural, ethnic, and religious backgrounds. We seek students who demonstrate a potential for success in our supportive and challenging environment. We employ Christian faculty who are dedicated to teaching, scholarship, advising, and service as they model the principles of the Christian faith. As a Baptist university we are committed to the integration of learning and Christian faith in the pursuit of truth.

Contact for Interpretation: President

This Policy statement supersedes all previous policy statements on this subject.

POLICY AND PROCEDURES MANUAL

EAST TEXAS BAPTIST UNIVERSITY

Classification Number: 1.1.02

Page: 1 of 2

Issued: September 3, 1999

Revised: February 15, 2007

SUBJECT: EMPLOYMENT AND RETENTION EXPECTATIONS FOR EMPLOYEES

POLICY STATEMENT

It is the policy of East Texas Baptist University to employ qualified employees who possess the necessary experience, competence, and capacity to provide leadership compatible with the mission and purpose of the University.

FACTS OF INTEREST

East Texas Baptist University seeks administrators, academic officers, faculty, and staff who have a personal relationship with Christ, who are familiar with truth as revealed in the Bible, who live out this truth in the presence of others, who can create an environment where Christ is lived out in the life of the individual, and who have the necessary knowledge, experience, and competence for the position.

PROCEDURES

In their initial and continuing employment, administrators, faculty, and staff at East Texas Baptist University are to profess a saving relationship with Jesus Christ and to exhibit a lifestyle that demonstrates that commitment.

The University expects that employees will refrain from behaviors such as sexual misconduct, abusive and profane behavior, the casual use and especially the abuse of alcoholic beverages and/or drugs.

As a professional organization, East Texas Baptist University expects employees to demonstrate professionalism in dress, actions, and fulfilling position responsibilities. Unprofessional behavior such as inappropriate dress, conducting personal business while at work, and bringing children to the workplace is not acceptable. The University administration, through prudent selection, guidance, development, and reappointment decisions, is provided the flexibility to carry out these types of expectations.

The immediate supervisor will screen all applicants to ensure compatibility with the University mission and capabilities for the position. The supervisor may utilize a search/screening committee to assist with the evaluation of the applicants.

For administrators, administrative officers, and staff: All applicants shall be interviewed by the appropriate administrative personnel who at a minimum will include the applicant, potential supervisor, and his/her supervisor.

This Policy statement supersedes all previous policy statements on this subject.

POLICY AND PROCEDURES MANUAL

EAST TEXAS BAPTIST UNIVERSITY

Classification Number: 1.1.02

Page: 2 of 2

Issued: September 3, 1999

Revised: February 15, 2007

EMPLOYMENT AND RETENTION EXPECTATIONS FOR EMPLOYEES, CONT...

All faculty shall be interviewed by:

1. Chair of the Department in which the position is open
2. Dean of the School
3. Vice President for Academic Affairs
4. Vice President for Spiritual Development
5. President

The credentials for newly hired faculty shall be presented for review by the Executive Committee of the Board of Trustees at its fall meeting. The purpose for the review will be to guide future hiring

policies as the Board shall not interfere in the hiring process of specific faculty or staff.

Contact for Interpretation: President

This Policy statement supersedes all previous policy statements on this subject.

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EAST TEXAS BAPTIST UNIVERSITY

"A World of Opportunity in a Community of Faith"

Application for Undergraduate Admission and Financial Aid

East Texas Baptist University welcomes all applicants who meet its requirements and qualifications, and does not illegally discriminate on the basis of sex, handicap, age, race, color, religion, national or ethnic origin, or veteran status.

PERSONAL DATA (Please print or type)

Legal Name _____

Last First Middle Maiden Preferred Name

Address Street _____ P.O. Box

City State Zip

Home County/ Parish _____ Social Security Number _____ T-Shirt Size _____

E-Mail _____ Date of Birth _____

Home Phone _____

Gender
☐ Male
☐ Female

Marital Status
☐ Single
☐ Married

Cell Phone _____

May the Admissions Office to contact you via text message? ☐ Yes ☐ No

What is the best way for you to be contacted by the Admissions Office?

☐ Home ☐ Phone Cell ☐ Phone ☐ Email

U.S. Citizen? ☐ Yes ☐ No

Resident Alien? ☐ Yes ☐ No

If not a US citizen, country of citizenship _____

APPLICATION STATUS

☐ Freshman ☐ Transfer ☐ Re-enter ETBU

Starting Term: Year _____

☐ Fall ☐ Spring ☐ May Term

☐ June Term ☐ July Term

Will you be living in an ETBU Residence Hall?

☐ Yes ☐ No (Students under the age of 25 are required to live in ETBU housing unless you live within commuting distance. See catalog for more details.)

If yes, ☐ single student housing or ☐ family housing

Will you enroll full-time *(12 or more hours)*?

☐ Yes ☐ Part-time?

Have you ever been convicted or adjudicated of a felony or Class A misdemeanor? ☐ Yes ☐ No

(If yes, explain your circumstances and rehabilitation program on a separate sheet of paper and attach to this application)

If you have a physical disability that will require special accommodation, you must contact the Office of Advising in writing at least 60 days before classes begin to see what arrangements can be made. You will need to explain your circumstances and accommodation requests.

ADDITIONAL INFORMATION (This information will be used in a non-discriminatory manner, consistent with applicable civil rights laws)

Contributing factors for choosing to apply to ETBU. Check all that apply:

- ☐ Alumni
- ☐ Church Staff Member
- ☐ High School Counselor
- ☐ Admissions Counselor
- ☐ Attended Summer Camp at ETBU
- ☐ Rec Team
- ☐ Scholarship/Financial Aid
- ☐ ETBU Faculty/Staff Member
- ☐ Other _____
- ☐ Parents/Siblings
- ☐ Magazine Ad
- ☐ Location
- ☐ College Fair
- ☐ Current Students
- ☐ Brochures
- ☐ Academic Program
- ☐ Campus Visit

Home Church/Religious Preference _____

_____

List any extra-curricular activities you would like to continue in college: _____

Did your parent(s) attend ETBU? ☐ Yes ☐ No

If so, what years?

_____

What is the name of the parent(s) who attended?

_____

Does either one of your parents work full-time for a Southern Baptist Church or Agency?

☐ Yes ☐ No

If so, what church agency?

_____

Universities are asked by many, including the federal government, accrediting associations, college guides, newspapers, and our own university communities, to describe the racial/ethnic backgrounds of our students and employees. In order to respond to these requests, we ask you to answer the following two questions:

(1) Do you consider yourself to be Hispanic/Latino?

☐ Yes ☐ No

(2) In addition, select one or more of the following racial categories to describe yourself:

☐ American Indian or Alaska Native
☐ Asian
☐ Black or African American
☐ Native Hawaiian or Pacific Islander
☐ White

Signature and Honor Agreement

East Texas Baptist University emphasizes a biblical standard of personal conduct and moral character by all students. ETBU is committed to providing and maintaining an environment conducive to the integration of faith and learning, leadership development and academic excellence. Therefore, if accepted for admission, I promise to act in accordance with the student handbook. I understand that signing this statement is a condition of my acceptance to East Texas Baptist University. ETBU has my permission to verify the information contained in this application. I consent to the release of information concerning my academic and/or financial status to scholarship donors. I understand that if any information on this form is found to be inaccurate or incomplete, it will be sufficient cause for rejection or dismissal. I agree that if my student account, for any semester enrolled, becomes delinquent and all methods of collection have been exhausted by the University, my account will be turned over to a third party collector and I will be responsible for all collection and legal fees.

Applicant Signature _____

Printed Name: _____

Date: _____

Submit this Application with the following credentials:

1. Non-refundable application fee of $25.00 *(International fee $50.00; Re-enter fee $15.00)*

2. **Freshman Admission:** ACT or SAT Scores; High School Transcript/GED Certificate; College Transcript *if applicable.*

Transfer Admission: (24+ transferable hours) Transcripts from all colleges attended

3. Return to: Office of Admissions
East Texas Baptist University
One Tiger Drive
Marshall, TX 75670
FAX: 903-923-2001

(For other forms, please visit our website: www.etbu.edu

BYLAWS OF EAST TEXAS BAPTIST UNIVERSITY

As Adopted September 7, 2012

ARTICLE I. – MISSION

1.01. The University shall have a mission statement which shall guide the University which shall be approved by the Board of Trustees. The statement shall be reviewed periodically by the Board, and communicated to the institution's constituencies. It shall be a clearly defined statement specific to this University and appropriate to an institution of higher education. It shall address both teaching and learning, and the religious nature of the University.

ARTICLE II. – BOARD OF TRUSTEES

2.01. Composition of the Board of Trustees. The Board of Trustees is composed of thirty-six (36) members. The Board shall be divided into two classes: One class shall be composed of a simple majority (50% + 1) of the total number of members and shall be appointed by the Baptist General Convention of Texas and shall be designated as "Convention-appointed" Trustees; and another class, composed of the remaining number of members who shall be elected by the Board of Trustees and shall be designated "Board-elected."

2.02. Term of Office of Trustees. Trustees shall be elected or appointed for a term of three years unless (a) elected or appointed to fill a vacancy, in which case Trustees may be elected by the Board for the unexpired term of the predecessor in office, and

Trustees may be appointed by the Convention to serve some or all of the unexpired term of the predecessor in office; or (b) elected or appointed to a term of office of one or two years in order to accomplish the rotation of the Board to achieve a rotation in office whereby the terms of one-third of each class expire each year; or (c) the Trustee dies, resigns, or is removed from office prior to the expiration of the term. Unless removed, each Trustee shall hold office for the term for which the Trustee is elected or appointed and until the Trustee's successor shall have been elected or appointed, and qualified. A Trustee's term shall commence on the date of the annual organizational meeting for the Board immediately following the Trustee's election.

2.03. Election and Appointment of Trustees.

a. Board-elected Trustees. The Board of Trustees may elect persons to fill vacancies which occur in positions in the Board-elected class, and, upon the expiration of the terms of Board-elected Trustees, the Board may elect the successors. The Board Chair shall appoint three (3) at-large Trustee members at the January Board meeting to serve on a Trustee Nominating Committee along with the Vice Chair of the Board and the Chair of the Board. The Chair of the Board will serve as the Trustee Nominating Committee Chair. This five (5) member Trustee Nominating Committee shall nominate individuals to fill vacancies in positions in the Board-elected class of Trustees. The nominations shall be presented to the full Board at the May Board meeting for consideration and election. The elected Trustees will take office at the annual reorganization Board meeting the following

January. Election of a Trustee shall occur upon the affirmative vote of a majority of Trustees present and voting in a meeting at which a majority of the Trustees in office are present.

b. Convention-appointed Trustees. The Baptist General Convention of Texas may appoint persons to fill vacancies which occur in positions in the Convention-appointed positions, and, upon the expiration of the terms of Convention-appointed Trustees; the Convention may appoint the successors. The Baptist General Convention of Texas may delegate its authority to appoint Trustees to its Executive Board.

2.04. Qualifications. Trustees shall be active members of Baptist churches. A Trustee who has served three full successive terms shall not be eligible for re-election until he or she shall have been out of office for one year.

2.05. Conflict of Interest. Placed in a position of trust, individual Trustees shall act in good faith, with ordinary care, and in a manner the Trustee reasonably believes to be in the best interest of the Corporation. Trustees owe a duty of loyalty to East Texas Baptist University. Having been charged with a fiduciary responsibility, the Trustee must place the interests of the University first and foremost, keeping in mind the unique nature and mission of the University as an institution affiliated with the Baptist General Convention of Texas. A Trustee shall claim no higher allegiance to a special interest group such as alumni, faculty, outside business interest, or church or denominational affiliation. Trustees shall cause the Board of Trustees to be free from undue

influence from political, religious, or other external bodies and shall protect the institution and its officers from such influence. The overriding premise of a Trustee's duty of loyalty is that of fairness to East Texas Baptist University. The standard commonly used to determine fairness is whether a proposed transaction is at least as favorable to the institution as it would be should the transaction be entered into with strangers. Accordingly, a Trustee must avoid using his or her position for personal gain or advantage, or to obtain favored status for any special group, business, or family entity with which the Trustee is affiliated. In the spirit of disclosure, the Trustee shall notify the Board of Trustees of a potential conflict of interest and shall recuse him/herself from all votes pertaining to the contract or transaction. Contracts or transactions between the University and a Trustee or officer, or an entity or other organization in which one or more of the University's Trustees or officers is a managerial official or a member or has a financial interest, shall be governed by Section 22.230 of the Texas Business Organizations Code and East Texas Baptist University Policy 1.4.00.

2.06. Removal. A Trustee may be removed from office by whoever, the Convention or the Board of Trustees, appointed or elected the Trustee. Removal shall occur only upon the finding of cause and following a fair process which shall include notice to the Trustee of the reason for removal and an opportunity for the Trustee to be heard. Removal by the Board of Trustees shall occur upon the vote of two-thirds of the Trustees in attendance at a regular meeting. Removal by the Convention shall occur upon the vote

of a majority of a quorum of messengers. "Cause" shall include excessive unexcused absences from the meetings of the Board, and conduct which is illegal, or deemed immoral or not to be in the best interests of the University.

a. With regard to excessive unexcused absences, the Trustee shall be removed from office by the body which elected or appointed the Trustee upon the Board's finding that the Trustee should be removed. The duty of care owed by the Trustee to the University requires that the Trustee be faithful in attending meetings of the Board and of committees of which the Trustee is a member. Any Trustee who, within one year, is absent from three meetings, shall be contacted by the Board Chair to determine the cause of the absences and their commitment as a Trustee. If the chairperson is not satisfied with the response

* * *

Report of the Baptist Faith and Message Study Committee to the Southern Baptist Convention

Adopted, June 14th, 2000

The 1999 session of the Southern Baptist Convention, meeting in Atlanta, Georgia, adopted the following motion addressed to the President of the Convention:

> **"I move that in your capacity as Southern Baptist Convention chairman, you appoint a blue ribbon committee to review the Baptist Faith and Message statement with the responsibility to report and bring any recommendations to this meeting next June in Orlando."**

President Paige Patterson appointed the committee as follows: Max Barnett (OK), Steve Gaines (AL), Susie Hawkins (TX), Rudy A. Hernandez (TX), Charles S. Kelley, Jr. (LA), Heather King (IN), Richard D. Land (TN), Fred Luter (LA), R. Albert Mohler, Jr. (KY), T. C. Pinckney (VA), Nelson Price (GA), Adrian Rogers (TN), Roger Spradlin (CA), Simon Tsoi (AZ), Jerry Vines (FL). Adrian Rogers (TN) was appointed chairman.

Your committee thus constituted begs leave to present its report as follows:

Baptists are a people of deep beliefs and cherished doctrines. Throughout our history we have been a confessional people, adopting statements of faith as a witness to our beliefs and a pledge of our faithfulness to the doctrines revealed in Holy Scripture.

Our confessions of faith are rooted in historical precedent, as the church in every age has been called upon to define and defend its beliefs. Each generation of Christians bears the responsibility of guarding the treasury of truth that has been entrusted to us [2 Timothy 1:14]. Facing a new century, Southern Baptists must meet the demands and duties of the present hour.

New challenges to faith appear in every age. A pervasive anti-supernaturalism in the culture was answered by Southern Baptists in 1925, when the Baptist Faith and Message was first adopted by this Convention. In 1963, Southern Baptists responded to assaults upon the authority and truthfulness of the Bible by adopting revisions to the Baptist Faith and Message. The Convention added an article on "The Family" in 1998, thus answering cultural confusion with the clear teachings of Scripture. Now, faced with a culture hostile to the very notion of truth, this generation of Baptists must claim anew the eternal truths of the Christian faith.

Your committee respects and celebrates the heritage of the Baptist Faith and Message, and affirms the decision of the Convention in 1925 to adopt the New Hampshire Confession of Faith, "revised at certain points and with some additional articles growing out of certain needs " We also respect the important contributions of the 1925 and 1963 editions of the Baptist Faith and Message.

With the 1963 committee, we have been guided in our work by the 1925 "statement of the historic Baptist conception of the nature and function of confessions of faith in our religious and denominational life "

It is, therefore, quoted in full as a part of this report to the Convention:

(1) That they constitute a consensus of opinion of some Baptist body, large or small, for the general instruction and guidance of our own people and others concerning those articles of the Christian faith which are most surely held among us. They are not intended to add anything to the simple conditions of salvation revealed in the New Testament, viz., repentance toward God and faith in Jesus Christ as Saviour and Lord.

(2) That we do not regard them as complete statements of our faith, having any quality of finality or infallibility. As in the past so in the future, Baptists should hold themselves free to revise their statements of faith as may seem to them wise and expedient at any time.

(3) That any group of Baptists, large or small, have the inherent right to draw up for themselves and publish to the world a confession of their faith whenever they may think it advisable to do so.

(4) That the sole authority for faith and practice among Baptists is the Scriptures of the Old and New Testaments. Confessions are only guides in interpretation, having no authority over the conscience.

(5) That they are statements of religious convictions, drawn from the Scriptures, and are not to be used to hamper freedom of thought or investigation in other realms of life.

Baptists cherish and defend religious liberty, and deny the right of any secular or religious authority to impose a confession of faith upon a church or body of churches. We honor the principles of soul competency and the priesthood of believers, affirming together both our liberty in Christ and our accountability to each other under the Word of God.

Baptist churches, associations, and general bodies have adopted confessions of faith as a witness to the world, and as instruments of doctrinal accountability. We are not embarrassed to state before the world that these are doctrines we hold precious and as essential to the Baptist tradition of faith and practice.

As a committee, we have been charged to address the "certain needs" of our own generation. In an age increasingly hostile to Christian truth, our challenge is to express the truth as revealed in Scripture, and to bear witness to Jesus Christ, who is "the Way, the Truth, and the Life."

The 1963 committee rightly sought to identify and affirm "certain definite doctrines that Baptists believe, cherish, and with which they have been and are now closely identified." Our living faith is established upon eternal truths. "Thus this generation of Southern Baptists is in historic succession of intent and purpose as it endeavors to state for its time and theological climate those articles of the Christian faith which are most surely held among us."

It is the purpose of this statement of faith and message to set forth certain teachings which we believe.

Respectfully Submitted,
The Baptist Faith and Message Study Committee
Adrian Rogers, Chairman

Committee Members:
Adrian Rogers, Chairman
Max Barnett
Steve Gaines
Susie Hawkins
Rudy A. Hernandez
Charles S. Kelley, Jr.
Heather King
Richard D. Land
Fred Luter
R. Albert Mohler, Jr.
T. C. Pinckney
Nelson Price
Roger Spradlin
Simon Tsoi
Jerry Vines

The Baptist Faith and Message

I. The Scriptures

The Holy Bible was written by men divinely inspired and is God's revelation of Himself to man. It is a perfect treasure of divine instruction. It has God for its author, salvation for its end, and truth, without any mixture of error, for its matter. Therefore, all Scripture is totally true and trustworthy. It reveals the principles by which God judges us, and therefore is, and will remain to the end of the world, the true center of Christian union, and the supreme standard by which all human conduct, creeds, and religious

opinions should be tried. All Scripture is a testimony to Christ, who is Himself the focus of divine revelation.

Exodus 24:4; Deuteronomy 4:1-2; 17:19; Joshua 8:34; Psalms 19:7-10; 119:11,89,105,140; Isaiah 34:16; 40:8; Jeremiah 15:16; 36:1-32; Matthew 5:17-18; 22:29; Luke 21:33; 24:44-46; John 5:39; 16:13-15; 17:17; Acts 2:16ff.; 17:11; Romans 15:4; 16:25-26; 2 Timothy 3:15-17; Hebrews 1:1-2; 4:12; 1 Peter 1:25; 2 Peter 1:19-21.

II. God

There is one and only one living and true God. He is an intelligent, spiritual, and personal Being, the Creator, Redeemer, Preserver, and Ruler of the universe. God is infinite in holiness and all other perfections. God is all powerful and all knowing; and His perfect knowledge extends to all things, past, present, and future, including the future decisions of His free creatures. To Him we owe the highest love, reverence, and obedience. The eternal triune God reveals Himself to us as Father, Son, and Holy Spirit, with distinct personal attributes, but without division of nature, essence, or being.

A. God the Father

God as Father reigns with providential care over His universe, His creatures, and the flow of the stream of human history according to the purposes of His grace. He is all powerful, all knowing, all loving, and all wise. God is Father in truth to those who become children of God through faith in Jesus Christ. He is fatherly in His attitude toward all men.

Genesis 1:1; 2:7; Exodus 3:14; 6:2-3; 15:11ff.; 20:1ff.; Leviticus 22:2; Deuteronomy 6:4; 32:6; 1 Chronicles 29:10; Psalm 19:1-3; Isaiah 43:3,15; 64:8; Jeremiah 10:10; 17:13; Matthew 6:9ff.; 7:11; 23:9; 28:19; Mark 1:9-11; John 4:24; 5:26; 14:6-13; 17:1-8; Acts 1:7; Romans 8:14-15; 1 Corinthians 8:6; Galatians 4:6; Ephesians 4:6; Colossians 1:15; 1 Timothy 1:17; Hebrews 11:6; 12:9; 1 Peter 1:17; 1 John 5:7.

B. God the Son

Christ is the eternal Son of God. In His incarnation as Jesus Christ He was conceived of the Holy Spirit and born of the virgin Mary. Jesus perfectly revealed and did the will of God, taking upon Himself human nature with its demands and necessities and identifying Himself completely with mankind yet without sin. He honored the divine law by His personal obedience, and in His substitutionary death on the cross He made provision for the redemption of men from sin. He was raised from the dead with a glorified body and appeared to His disciples as the person who was with them before His crucifixion. He ascended into heaven and is now exalted at the right hand of God where He is the One Mediator, fully God, fully man, in whose Person is effected the reconciliation between God and man. He will return in power and glory to judge the world and to consummate His redemptive mission. He now dwells in all believers as the living and ever present Lord.

Genesis 18:1ff.; Psalms 2:7ff.; 110:1ff.; Isaiah 7:14; 53; Matthew 1:18-23; 3:17: 8:29; 11:27; 14:33; 16:16,27; 17:5; 27; 28:1-6,19; Mark 1:1; 3:11; Luke 1:35; 4:41; 22:70; 24:46; John 1:1-18,29; 10:30,38; 11:25-27; 12:44-50; 14:7-11; 16:15-16,28; 17:1-5, 21-22; 20:1-

20,28; Acts 1:9; 2:22-24; 7:55-56; 9:4-5,20; Romans 1:3-4; 3:23-26; 5:6-21; 8:1-3,34; 10:4; 1 Corinthians 1:30; 2:2; 8:6; 15:1-8,24-28; 2 Corinthians 5:19-21; 8:9; Galatians 4:4-5; Ephesians 1:20; 3:11; 4:7-10; Philippians 2:5-11; Colossians 1:13-22; 2:9; 1 Thessalonians 4:14-18; 1 Timothy 2:5-6; 3:16; Titus 2:13-14; Hebrews 1:1-3; 4:14-15; 7:14-28; 9:12-15,24-28; 12:2; 13:8; 1 Peter 2:21-25; 3:22; 1 John 1:7-9; 3:2; 4:14-15; 5:9; 2 John 7-9; Revelation 1:13-16; 5:9-14; 12:10-11; 13:8; 19:16.

C. God the Holy Spirit

The Holy Spirit is the Spirit of God, fully divine. He inspired holy men of old to write the Scriptures. Through illumination He enables men to understand truth. He exalts Christ. He convicts men of sin, of righteousness, and of judgment. He calls men to the Saviour, and effects regeneration. At the moment of regeneration He baptizes every believer into the Body of Christ. He cultivates Christian character, comforts believers, and bestows the spiritual gifts by which they serve God through His church. He seals the believer unto the day of final redemption. His presence in the Christian is the guarantee that God will bring the believer into the fullness of the stature of Christ. He enlightens and empowers the believer and the church in worship, evangelism, and service.

Genesis 1:2; Judges 14:6; Job 26:13; Psalms 51:11; 139:7ff.; Isaiah 61:1-3; Joel 2:28-32; Matthew 1:18; 3:16; 4:1; 12:28-32; 28:19; Mark 1:10,12; Luke 1:35; 4:1,18-19; 11:13; 12:12; 24:49; John 4:24; 14:16-17,26; 15:26; 16:7-14; Acts 1:8; 2:1-4,38; 4:31; 5:3; 6:3; 7:55; 8:17,39; 10:44; 13:2; 15:28; 16:6; 19:1-6; Romans 8:9-11,14-16,26-27; 1 Corinthians 2:10-14; 3:16; 12:3-

11,13; Galatians 4:6; Ephesians 1:13-14; 4:30; 5:18; 1 Thessalonians 5:19; 1 Timothy 3:16; 4:1; 2 Timothy 1:14; 3:16; Hebrews 9:8,14; 2 Peter 1:21; 1 John 4:13; 5:6-7; Revelation 1:10; 22:17.

III. Man

Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation. In the beginning man was innocent of sin and was endowed by his Creator with freedom of choice. By his free choice man sinned against God and brought sin into the human race. Through the temptation of Satan man transgressed the command of God, and fell from his original innocence whereby his posterity inherit a nature and an environment inclined toward sin. Therefore, as soon as they are capable of moral action, they become transgressors and are under condemnation. Only the grace of God can bring man into His holy fellowship and enable man to fulfill the creative purpose of God. The sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love.

Genesis 1:26-30; 2:5,7,18-22; 3; 9:6; Psalms 1; 8:3-6; 32:1-5; 51:5; Isaiah 6:5; Jeremiah 17:5; Matthew 16:26; Acts 17:26-31; Romans 1:19-32; 3:10-18,23; 5:6,12,19; 6:6; 7:14-25; 8:14-18,29; 1 Corinthians 1:21-31; 15:19,21-22; Ephesians 2:1-22; Colossians 1:21-22; 3:9-11.

IV. Salvation

Salvation involves the redemption of the whole man, and is offered freely to all who accept Jesus Christ as Lord and Saviour, who by His own blood obtained eternal redemption for the believer. In its broadest sense salvation includes regeneration, justification, sanctification, and glorification. There is no salvation apart from personal faith in Jesus Christ as Lord.

A. Regeneration, or the new birth, is a work of God's grace whereby believers become new creatures in Christ Jesus. It is a change of heart wrought by the Holy Spirit through conviction of sin, to which the sinner responds in repentance toward God and faith in the Lord Jesus Christ. Repentance and faith are inseparable experiences of grace. Repentance is a genuine turning from sin toward God. Faith is the acceptance of Jesus Christ and commitment of the entire personality to Him as Lord and Saviour.

B. Justification is God's gracious and full acquittal upon principles of His righteousness of all sinners who repent and believe in Christ. Justification brings the believer unto a relationship of peace and favor with God.

C. Sanctification is the experience, beginning in regeneration, by which the believer is set apart to God's purposes, and is enabled to progress toward moral and spiritual maturity through the presence and power of the Holy Spirit dwelling in him. Growth in grace should continue throughout the regenerate person's life.

D. Glorification is the culmination of salvation and is the final blessed and abiding state of the redeemed.

Genesis 3:15; Exodus 3:14-17; 6:2-8; Matthew 1:21; 4:17; 16:21-26; 27:22-28:6; Luke 1:68-69; 2:28-32; John 1:11-14,29; 3:3-21,36; 5:24; 10:9,28-29; 15:1-16; 17:17; Acts 2:21; 4:12; 15:11; 16:30-31; 17:30-31; 20:32; Romans 1:16-18; 2:4; 3:23-25; 4:3ff.; 5:8-10; 6:1-23; 8:1-18,29-39; 10:9-10,13; 13:11-14; 1 Corinthians 1:18,30;

God is the source of all blessings, temporal and spiritual; all that we have and are we owe to Him. Christians have a spiritual debtorship to the whole world, a holy trusteeship in the gospel, and a binding stewardship in their possessions. They are therefore under obligation to serve Him with their time, talents, and material possessions; and should recognize all these as entrusted to them to use for the glory of God and for helping others. According to the Scriptures, Christians should contribute of their means cheerfully, regularly, systematically, proportionately, and liberally for the advancement of the Redeemer's cause on earth.

Genesis 14:20; Leviticus 27:30-32; Deuteronomy 8:18; Malachi 3:8-12; Matthew 6:1-4,19-21; 19:21; 23:23; 25:14-29; Luke 12:16-21,42; 16:1-13; Acts 2:44-47; 5:1-11, 17:24-25; 20:35; Romans 6:6-22; 12:1-2; 1 Corinthians 4:1-2; 6:19-20; 12; 16:1-4; 2 Corinthians 8-9; 12:15; Philippians 4:10-19; 1 Peter 1:18-19.

XIV. Cooperation

Christ's people should, as occasion requires, organize such associations and conventions as may best secure cooperation for the great objects of the Kingdom of God. Such organizations have no authority over one another or over the churches. They are voluntary and

advisory bodies designed to elicit, combine, and direct the energies of our people in the most effective manner. Members of New Testament churches should cooperate with one another in carrying forward the missionary, educational, and benevolent ministries for the extension of Christ's Kingdom. Christian unity in the New Testament sense is spiritual harmony and voluntary cooperation for common ends by various groups of Christ's people. Cooperation is desirable between the various Christian denominations, when the end to be attained is itself justified, and when such cooperation involves no violation of conscience or compromise of loyalty to Christ and His Word as revealed in the New Testament.

Exodus 17:12; 18:17ff.; Judges 7:21; Ezra 1:3-4; 2:68-69; 5:14-15; Nehemiah 4; 8:1-5; Matthew 10:5-15; 20:1-16; 22:1-10; 28:19-20; Mark 2:3; Luke 10:1ff.; Acts 1:13-14; 2:1ff., 4:31-37; 13:2-3; 15:1-35; 1 Corinthians 1:10-17; 3:5-15; 12; 2 Corinthians 8-9; Galatians 1:6-10; Ephesians 4:1-16; Philippians 1:15-18.

XV. The Christian and the Social Order

All Christians are under obligation to seek to make the will of Christ supreme in our own lives and in human society. Means and methods used for the improvement of society and the establishment of righteousness among men can be truly and permanently helpful only when they are rooted in the regeneration of the individual by the saving grace of God in Jesus Christ. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual

immorality, including adultery, homosexuality, and pornography. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. Every Christian should seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love. In order to promote these ends Christians should be ready to work with all men of good will in any good cause, always being careful to act in the spirit of love without compromising their loyalty to Christ and His truth.

Exodus 20:3-17; Leviticus 6:2-5; Deuteronomy 10:12; 27:17; Psalm 101:5; Micah 6:8; Zechariah 8:16; Matthew 5:13-16,43-48; 22:36-40; 25:35; Mark 1:29-34; 2:3ff., 10:21; Luke 4:18-21, 10:27-37; 20:25; John 15:12; 17:15; Romans 12–14; 1 Corinthians 5:9-10; 6:1-7; 7:20-24; 10:23-11:1; Galatians 3:26-28; Ephesians 6:5-9; Colossians 3:12-17: 1 Thessalonians 3:12; Philemon; James 1:27; 2:8.

XVI. Peace and War

It is the duty of Christians to seek peace with all men on principles of righteousness. In accordance with the spirit and teachings of Christ they should do all in their power to put an end to war.

The true remedy for the war spirit is the gospel of our Lord. The supreme need of the world is the acceptance of His teachings in all the affairs of men and nations, and the practical application of His law

of love. Christian people throughout the world should pray for the reign of the Prince of Peace.

Isaiah 2:4; Matthew 5:9,38-48; 6:33; 26:52; Luke 22:36, 38; Romans 12:18-19; 13:1-7; 14:19; Hebrews 12:14; James 4:1-2.

XVII. Religious Liberty

God alone is Lord of the conscience, and He has left it free from the doctrines and commandments of men which are contrary to His Word or not contained in it. Church and state should be separate. The state owes to every church protection and full freedom in the pursuit of its spiritual ends. In providing for such freedom no ecclesiastical group or denomination should be favored by the state more than others. Civil government being ordained of God, it is the duty of Christians to render loyal obedience thereto in all things not contrary to the revealed will of God. The church should not resort to the civil power to carry on its work. The gospel of Christ contemplates spiritual means alone for the pursuit of its ends. The state has no right to impose penalties for religious opinions of any kind. The state has no right to impose taxes for the support of any form of religion. A free church in a free state is the Christian ideal, and this implies the right of free and unhindered access to God on the part of all men, and the right to form and propagate opinions in the sphere of religion without interference by the civil power.

Genesis 1:27; 2:7; Matthew 6:6-7,24; 16:26; 22:21; John 8:36; Acts 4:19-20; Romans 6:1-2; 13:1-7; Galatians 5:1,13; Philippians 3:20; 1 Timothy 2:1-2; James 4:12; 1 Peter 2:12-17; 3:11-17; 4:12-19.

XVIII. The Family

God has ordained the family as the foundational institution of human society. It is composed of persons related to one another by marriage, blood, or adoption.

Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God's unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race.

The husband and wife are of equal worth before God, since both are created in God's image. The marriage relationship models the way God relates to His people. A husband is to love his wife as Christ loved the church. He has the God-given responsibility to provide for, to protect, and to lead his family. A wife is to submit herself graciously to the servant leadership of her husband even as the church willingly submits to the headship of Christ. She, being in the image of God as is her husband and thus equal to him, has the God-given responsibility to respect her husband and to serve as his helper in managing the household and nurturing the next generation.

Children, from the moment of conception, are a blessing and heritage from the Lord. Parents are to demonstrate to their children God's pattern for marriage. Parents are to teach their children spiritual and moral values and to lead them, through consistent lifestyle example and loving discipline, to

make choices based on biblical truth. Children are to honor and obey their parents.

Genesis 1:26-28; 2:15-25; 3:1-20; Exodus 20:12; Deuteronomy 6:4-9; Joshua 24:15; 1 Samuel 1:26-28; Psalms 51:5; 78:1-8; 127; 128; 139:13-16; Proverbs 1:8; 5:15-20; 6:20-22; 12:4; 13:24; 14:1; 17:6; 18:22; 22:6,15; 23:13-14; 24:3; 29:15,17; 31:10-31; Ecclesiastes 4:9-12; 9:9; Malachi 2:14-16; Matthew 5:31-32; 18:2-5; 19:3-9; Mark 10:6-12; Romans 1:18-32; 1 Corinthians 7:1-16; Ephesians 5:21-33; 6:1-4; Colossians 3:18-21; 1 Timothy 5:8,14; 2 Timothy 1:3-5; Titus 2:3-5; Hebrews 13:4; 1 Peter 3:1-7.

STUDENT HANDBOOK
2013-14

ETBU TIGERS

Public Display of Affection

In an effort to encourage high moral standards and promote sensitivity to others, students are encouraged to practice restraint in any public display of affection. Any behavior beyond holding hands, being arm in arm, hugging, or light kissing is discouraged in public. Students are not allowed to lie down together on furniture in any location on campus. Any public display beyond these guidelines may lead to disciplinary sanctions.

Sexual Harassment

Sexual harassment is a form of sexual discrimination prohibited by civil rights laws and university policy. Those who engage in sexual harassment may be subject to civil and criminal penalties as well as disciplinary action by the University. Sexual harassment is defined as unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of any right, privilege, power or immunity, either explicitly or implicitly. Sexual harassment may range from unthinking and often unintentional verbal denigration of a person on the basis of gender to actual physical assault. Some examples that may constitute sexual harassment include but are not limited to: offensive sexual flirtations, advances, or pressure for sexual activity; unwanted touching, hugging, rubbing, patting,

pinching or unnecessary brushing another's body; unwanted exposure to sexual graffiti, photographs or suggestive objects; obscene gestures, or sexual innuendoes or statements made at inappropriate times or disguised as humor; disparaging remarks about one's gender; or any offensive or abusive physical contact. Individuals who believe they have been subjected to sexual harassment may report the incident to Student Affairs. The sexual harassment policy of ETBU can be viewed on the web at: http://www.etbu.edu/php/pnpmanual/3.4.05.pdf.

Sexual Misconduct

Members of the ETBU community are expected to live a life exhibiting high moral standards, including the Biblical view that sexual relations are reserved for the covenant of marriage between one man and one woman. The University prohibits inappropriate sexual behavior including, but not limited to, premarital sex, homosexuality. adultery, and indecent or obscene conduct or expression. The University reserves the right to discipline behavior which is deemed detrimental to individuals and/or the University community at large. Any of the above behaviors could lead to probation, suspension, or dismissal from ETBU. Because of health concerns, a student who becomes pregnant may not reside in a residence hall, but will be allowed to remain enrolled. Future enrollment of both the father and mother will be determined based on a number of circumstances reviewed on a case by case basis. The University may impose a disciplinary sanction that is appropriate for the situation, while offering counsel and assistance so that the sanction may be a catalyst for redemption.

ETBU supports a culture of life, and would not intend to do anything that would encourage a student to terminate a pregnancy.

Skateboards/Roller Blades/Scooters

East Texas Baptist University prohibits the use of skateboards, roller blades, and scooters on campus sidewalks, walkways, and in campus buildings. The University assumes no liability for injury to students and/or property

Solicitation

For the protection of students, no solicitation of any type (selling, promoting, etc.) is permitted by students or others on the University campus in offices, residence halls, houses, apartment areas, or through the University Post Office. No personal business (music lessons, computer sales, etc.) may be operated from any campus location without a letter of permission from the Dean of Students. Personal items may be advertised for sale on campus bulletin boards and the University website. Approval must be obtained from Student Affairs.

Stolen Property

Students responsible for theft of University property and/ or private or personal property will be subject to strict disciplinary sanction by the Dean of Students and will be held responsible for the return of the stolen property or the costs to replace it.

Student ID Cards

Students are required to show proper identification upon request by ETBU personnel or the Marshall Police Department. Students are not allowed to use ID cards that do not belong to them, whether authorized or unauthorized, for any reason. Failure to comply with this policy may result in disciplinary sanctions and/or the filing of criminal charges.

Student Travel

East Texas Baptist University student groups supported by University funding and traveling in University vehicles must obtain University permission and be accompanied by an approved sponsor. Group sponsors must be members of the University faculty or professional staff. The names of all persons participating in the trip must be submitted to Student Affairs. Non-academic student groups not receiving University funding, traveling without University funding and not being transported in University vehicles, are not required to file a travel request. An application for Approval of Off-Campus Trips must be submitted by the trip sponsor to Student Affairs at least three days prior to the group's departure date. Each request is acted upon by Student Affairs and forwarded to the Vice President for Academic Affairs when appropriate. A copy of the request will be forwarded to the trip sponsor. Students are encouraged to purchase the University insurance or provide proof of other coverage when traveling on ETBU-sponsored trips.

THE ETHICS & RELIGIOUS LIBERTY COMMISSION
OF THE SOUTHERN BAPTIST CONVENTION

THE THREAT TO RELIGIOUS FREEDOM: THE OBAMA ADMINISTRATION'S CONTRACEPTIVES MANDATE

THE ISSUE: HEALTH AND HUMAN SERVICES MANDATE VIOLATES RELIGIOUS FREEDOM

Under a regulation issued in January 2012 by the U.S. Department of Health and Human Services (HHS), nearly all insurance plans will be forced to provide their employees with free access to all FDA-approved contraceptives. This mandate includes coverage of abortion-inducing drugs like ella and Plan B (the "morning after" pill), abortion-causing IUDs, and sterilization. This mandate will force millions of Southern Baptists and other people of faith to violate their God-given and constitutionally-protected freedom of religion and conscience.

HOW THE HHS MANDATE TRAMPLES RELIGIOUS FREEDOM

Not only does the Patient Protection and Affordable Care Act mark the first time the U.S. government has forced citizens to purchase a product (health insurance), the HHS contraceptives mandate marks the first time people of faith have been forced by the

government to purchase products that violate their consciences.

A MATTER OF CONSCIENCE AND RELIGIOUS FREEDOM

Some people say this is about contraception. It is not. Many Southern Baptists accept the use of non-abortive contraceptives within marriage. The HHS mandate goes far beyond that. It requires that all insurance plans provide coverage for abortion-causing products. This means employers, including faith-based organizations, must make insurance plans available to their employees in violation of their religious beliefs. It also means that either the employers or the employees will be required to pay for these products through their premium payments. In effect, the Obama administration has declared that religious conviction about abortion is not an acceptable reason for exemption from this requirement. While the presenting offense is about abortion, the dominant issue is the government's determination to violate the constitutionally-protected freedom of conscience. No one should be forced by the government to buy or subsidize products that result in the killing of innocent human beings in violation of their consciences. What is at stake is whether our nation will protect our God-given and constitutionally-protected freedom of religion and conscience fought for by our Baptist forebears.

LIMITED EXEMPTIONS

The Obama administration's very narrow religious exemption means that most religious groups will be

required to provide access to contraceptives, including ones that cause abortions. Even under a rule proposed in January 2013, the religious exemption may not include organizations such as local Christian schools and soup kitchens or larger entities such as Christian universities that are not expressly tied to a house of worship. Institutions not covered by the narrow exemption will be forced to choose one of three untenable options:

- Obey the law at the expense of their conscience.
- Cease providing coverage—which would force the employees of these religious institutions to obtain coverage with offensive provisions and could subject the religious institution employer to fines if it is considered a large employer under applicable rules.
- Provide coverage but without complying with the HHS mandate that assaults the religious institution's conscience— which could result in fines to participants if their coverage through the religious institution employer is noncompliant.

LIMITED ACCOMMODATIONS

According to the original mandate, the only accommodation afforded religious institutions was a one-year extension to comply. Practically, this meant religious employers morally opposed to the mandate were granted an additional year before they must begin violating their consciences. That one-year extension ends Aug. 1, 2013.

NO COMPROMISE IN FORCE

On multiple occasions, President Obama announced so-called "compromises." One proposal was to supposedly exempt religiously-affiliated employers opposed to the mandate by allowing them to shift the burden of covering contraceptives and abortifacients to their insurance companies. This was merely an accounting gimmick. Employers would still have to make abortion-causing products available in the plans they offer their employees, and the insurance companies would be recovering the cost of these products indirectly through the premiums they charge. These so-called compromises were never formally adopted. Yet even if any of the president's "compromises" are adopted by HHS, the violation of constitutionally protected religious conscience remains.

In January 2013, HHS issued a "Notice of Proposed Rule Making" or NPRM. That proposed rule would provide relief for a slightly larger category of houses of worship and their integrated auxiliaries. This does nothing to provide relief for institutions which fall outside the administration's narrow definition of "religious institution." This includes many hospitals, universities, businesses, and schools. As of June 2013, more than 60 lawsuits have been filed challenging the mandate.

DIRECTLY IMPACTS SELF-INSURED RELIGIOUS INSTITUTIONS

Neither the current HHS rule nor the so-called "compromise" provides an exemption for religious employers that self-insure, which means they serve

as the source of benefit payments instead of contracting with a third party. That includes GuideStone Financial Resources, the Southern Baptist Convention's medical plan provider covering tens of thousands of pastors, church workers, professors, secretaries, social workers, missionaries, other agency workers, and their families. The HHS mandate reflects a sobering disregard for the unique and historic structure and role of self-insured medical programs like GuideStone and other large and established church health plans, as well as a shocking encroachment on religious freedom.

DIRECTLY IMPACTS PEOPLE OF FAITH

If the HHS mandate is not overturned or changed, many employers whose consciences are violated will have to stop providing insurance for their employees. As a result, when these employees seek to purchase their own insurance plans, they will find that the Obama administration's mandate requires every insurance plan to pay for these abortion-causing products and services. This will mean that all of us whose consciences are violated by this morally reprehensible mandate will be forced to choose between paying for these products and services, whether we use them or not, or not having insurance for ourselves and our families and paying a government fine for not having insurance.

UPSETS CHURCH AND STATE BALANCE

In recent decades, most conflicts over the church-state relationship have had to do with the Establishment Clause of the First Amendment, with debates about the appropriate role of faith in public

life. The HHS mandate is the culmination of a shift in church-state relations that has been emerging over the last decade or so, in which the conflict has gone from potential violations of the Establishment Clause to actual violations of the Free Exercise Clause. The HHS mandate is a direct assault on how people of faith can conduct their own lives according to the dictates of their consciences. The mandate puts the federal government in the position of imposing its will on the conscience by executive edict, casting aside individual conscience and religious freedom.

SETS DANGEROUS PRECEDENT

If the federal government can force religious employers and people of faith to purchase products that offend their faith and conscience, what can't it force them to do?

THE SOLUTION: RESTORE RELIGIOUS FREEDOM WITH RESPECT FOR RIGHTS OF CONSCIENCE ACT

Jesus instructed us to "render to Caesar what is Caesar's." How now shall we respond when Caesar demands what is God's? An effort to protect the freedoms of religion and conscience is taking form on Capitol Hill as the Health Care Conscience Rights Act (H.R. 940 / S. 1204). This would safeguard employers and individuals from being forced to violate their religious convictions on contraceptives and abortion-inducing drugs under health care. With our God-given and constitutionally-protected freedoms of religion and conscience at stake, the church cannot afford to be silent.

East Texas Baptist University
HEALTHCARE BENEFITS PLAN

PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION

Effective: January 1, 2000
Restated: January 1, 2010
Restated: January 1, 2011
Restated March 1, 2012

Third Party Administrator:
Mutual Assurance Administrators, Inc.
4004 Belt Line Rd, Suite 160
Addison, TX 75001

GENERAL PLAN INFORMATION

What is the purpose of the *Plan*?
The *Plan Sponsor* has established the *Plan* for your benefit, on the terms and conditions described herein. The *Plan Sponsor's* purpose in establishing the *Plan* is to help to offset, for you, the economic effects arising from an *injury* or *illness*. To accomplish this purpose, the *Plan Sponsor* must be cognizant of the necessity of containing health care costs through effective plan design, and the *Plan Administrator* must abide by the terms of the *summary plan description*, to allow the *Plan Sponsor* to allocate the resources available to help those individuals participating in the *Plan* to the maximum feasible extent.

The *Plan* is not a contract of employment between you and your *participating employer* and does not give you the right to be retained in the service of your *participating employer*.

The purpose of this summary plan description is to set forth the terms and provisions of the *Plan* that provide for the payment or reimbursement of all or a portion of certain medical expenses. The *summary plan description* is maintained by the *Plan Administrator* and may be inspected at any time during normal working hours by any *covered person*.

General *Plan* Information You Should Know

Name of *Plan*:	East Texas Baptist University Healthcare Benefits Plan
***Plan Sponsor*:**	**East Texas Baptist University 1209 N. Grove Marshall, TX 75670 903 923-2120**
***Plan Administrator*: (Named Fiduciary)**	**East Texas Baptist University 1209 N. Grove Marshall, TX 75670 903 923-2120**
***Plan Sponsor* ID No. (EIN):**	**75-0859801**
***Plan Year*:**	**January 1 through December 31**
***Plan* Number:**	**501**
***Plan* Type:**	**Medical Prescription Drug**
Source of Contributions:	**Employee Contributory**

Third Party Administrator:	**Mutual Assurance Administrators, Inc. 4004 Belt Line Rd., Suite 160 Addison, TX 75001 972 774-1100**
Participating Employer(s):	**East Texas Baptist University 1209 N. Grove Marshall, TX 75670 903 923-2120**

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[Page 35]

MEDICAL COVERED EXPENSES (Continued)

Hospice Care

Covered expenses include hospice care services for a terminally ill *covered person* when provided by a *hospice care agency*. The services must be provided through a formal, written hospice care treatment program and certified by the attending *physician as medically necessary*. Benefits are provided for:

- *Room and board* for confinement in a licensed, accredited hospice facility.
- Services and supplies furnished by the hospice while the patient is confined.
- Part-time nursing care by or under the supervision of a registered nurse.
- Nutrition services and/or special meals.
- Respite services.

- Counseling services by a licensed social worker or a licensed counselor.
- Bereavement counseling by a licensed social worker or a licensed counselor for the *employee* and/or covered *dependent*(s).

The attending *physician* must certify that the *covered person* is expected to continue to live for six months or less in order to qualify for this benefit.

If the *covered person* lives beyond six months, the *Plan* will approve additional hospice care benefits on receipt of satisfactory evidence of the continued *medical necessity* of the services.

Infertility Testing
Covered expenses will be limited to infertility testing only.

Other *Covered Expenses* Also Include:

- **Blood transfusions and blood products**, to the extent not replaced. The Plan will not cover expenses in connection with autologous blood acquisition and storage.
- **Oxygen**.
- **R.N. and L.P.N.** private duty nursing services for outpatient care when medically necessary.
- **Prosthetic devices and supplies**, including initial purchase price, fitting, adjustment and repairs. Replacements of prosthetic devices are not covered unless due to a significant change in the *covered person's* physical structure and the current device cannot be made serviceable.

- ***Surgical* dressings, splints, casts**, and other devices used in the reduction of fractures and dislocations, as well as other similar items that serve only a medical purpose, excluding items usually stocked in the home, or that have a value in the absence of an *illness* or *injury*.
- **One set of lenses** (contact or frame-type) following *surgery* for cataracts.
- **Reconstruction of a breast** following a *mastectomy*, reconstruction of the other breast to produce a symmetrical appearance, and prosthesis and physical complications from all stages of a mastectomy, including lymphademas, in a manner determined in consultation with the attending *physician* and the *covered person*. Reimbursement will be made according to the "Schedule of Benefits" section by type of service.
- **Birth control *drugs* or devices**. Covered expenses include oral contraceptives, implants and devices except for "emergency" contraceptives such as Levonelle, EllaOne, or Mifeprex or "emergency IUD's. Also see provisions of your Prescription *Drug* Card Program.
- **Cochlear implant**.
- **Educational.** Expenses that are related to educational services rendered for diabetic counseling, peritoneal dialysis, or any other educational service deemed to be *medically necessary* by the *Plan*.
- **Genetic testing and/or counseling.** For genetic testing or counseling.

- **Midwives.**
- **Orthotics**
- **Growth hormone therapy** as part of a treatment program approved by the *Plan Administrator*.
- **Surgical extraction of bone-impacted teeth.**
- **Prenatal vitamins.**
- **Sterilization procedures, elective.**
- **Oral *surgical* procedures,** including:
  - Excision of tumors and cysts of the jaws, cheeks, lips, tongues, roof and floor of the mouth.
  - *Emergency* repair due to *injury* to sound natural teeth.
  - *Surgery* needed to correct accidental *injuries* to the jaws, cheeks, lips, tongue, floor and roof of the mouth.
  - Excision of benign bony growths of the jaw and hard palate.
  - External incision and drainage of cellulitis.
  - Incision of sensory sinuses, salivary glands or ducts.
- **Treatment of temperomandibular joint dysfunction.** Treatment will be limited according to the "Schedule of Benefits" section.
- **Chelation therapy** for a diagnosis of lead poisoning, or a diagnosis of anemia for a *child*.

- **Wig** for hair loss after receiving chemotherapy– 1 wig per calendar year, maximum payment $500 per calendar year.

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[Page 38]

MEDICAL EXCLUSIONS AND LIMITATIONS

This Plan will not reimburse any expense that is not a *covered expense*. This *Plan* does not cover any charge for services or supplies:

- **Abortion.** Expenses that are *incurred* directly or indirectly as the result of an abortion except when the life of the mother would be threatened if the fetus were carried to term, or when complications arise.
- **Acupuncture.**
- **Chemical Dependency.**
- **Corrective shoes.** For corrective shoes.
- **Counseling.** For counseling, except as specifically the result of a *mental* or *nervous condition*, for:
  - Marital difficulties
  - Social maladjustment
  - Pastoral issues
  - Financial issues
  - Behavioral issues
  - Lack of discipline or other antisocial action.

- ***Custodial care.*** For custodial care, except as specified.
- **Dental *hospital* admissions.** Related to dental hospital admissions, unless determined to be *medically necessary* because of a concomitant condition.
- **Dental prescriptions.** For dental prescriptions (e.g., Peridex, fluoride).]
- **Dental.** Expenses that are related to dental treatment, except as specifically provided in this *Plan*.
- **Developmental delay.** For developmental disorders, including learning disabilities, mental retardation or autism.
- **Eating disorders.** That are related to eating disorders (e.g., anorexia and bulimia). This does not apply to any care for an underlying *mental or nervous condition.*
- **Educational.** Expenses that are related to education or vocational training.
    - This exclusion does not apply to educational services rendered for diabetic counseling, peritoneal dialysis, or any other educational service deemed to be *medically necessary* by the *Plan*.
- **Excess over semi-private rate.** That are in excess of the semi-private room rate, except as otherwise noted.
- ***Experimental.*** That are *experimental.*

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[Page 47]

PRESCRIPTION DRUG BENEFIT LIBRARY OPTIONS (Continued)

Benefits are provided for the purchase of *drugs* through the *Plan's* Prescription Drug Card Program. The *covered person* must purchase the prescription *drugs* through the Prescription Drug Card Program, and use either a participating pharmacy or the "mail order option." If a *covered person*, who is traveling and is at least 100 miles from home, must purchase a prescription *drug* at a non-participating pharmacy due to an *emergency*, the *Plan* will reimburse the cost of the drug at the *PPO Network Provider* percentage payable after satisfaction of the *PPO Network Provider deductible*, shown above."

Prescription *drugs* that are not purchased through the *Plan's* Prescription Drug Card Program will be covered as *Drugs integrated with medical plan* above.

The *Plan's* Prescription Drug Card Program is administered by Caremark. Caremark has a network of pharmacies which can identify *covered persons* and the *Plan's* coverage provisions. To find out which pharmacies participate, contact Caremark at (866) 475-0056.

Covered Prescriptions

Under the Prescription Drug Card Program, *covered expenses* include:

- Federal legend *drugs.*
- State-restricted *drugs.*
- Insulin.
- Syringes and needles used only to inject insulin.
- Contraceptives including devices, implants, injectables, and oral contraceptives except for all "emergency" contraceptives such as Levonelle, EllOne & Mifeprex and "emergency" IUD's.
- Acne/ Skin Disease Medications
- Prenatal and Pediatric Vitamins

Certain *drugs* are not covered, even when prescribed by your *physician.* Please refer to the list of "Excluded Drugs" below.

How the Program Works

There are two ways to purchase drugs through the *Plan's* Prescription Drug Card Program. You may save money by using the "mail order option" if you have prescription *drug(s)* that you must take on an on-going basis.

- To fill a prescription at a participating pharmacy (the "pharmacy option"), simply present your Plan ID card and pay your portion of the cost (shown in the "Schedule of Benefits"). The pharmacist will file the claim for you.

- To fill a prescription through the Drug Card Program's "mail order option":
  - Obtain a copy of the mail order form from CVS Caremark.
  - Complete the patient profile questionnaire (for your first order only).
  - Ask your *physician* to prescribe the needed medication for a 90-day supply, plus refills.
  - If you are presently taking medication, you will need a new prescription.
  - If you need the medication immediately, **but will be taking it on an on-going basis**, ask your *physician* for two prescriptions: one for a 14-day supply that you can have filled at a local pharmacy, and one for the balance of the prescription, up to a 90-day supply, that you can submit through the "mail order option."
  - Send the completed patient profile questionnaire to the address on the form with your original prescription(s), along with your check for payment of your portion of the cost (shown in the "Schedule of Benefits").

Once your order is processed, it will be sent to you via First Class Mail and it will include instructions for the re-order of future prescriptions and/or refills.

Copayments for the Prescription Drug Card Program do not accumulate toward the *out-of-pocket expense* limit.

Excluded *Drugs*

The *Plan* will not cover the following *drugs*, even when prescribed by the *covered person's physician*:

- **Anorexiants** (weight control *drugs*).
- **"Emergency Contraceptives"** all emergency contraceptives such as Levonelle, EllaOne, & Mifeprex and all emergency IUD's and devices.
- ***Experimental* or investigational *drugs***, including compounded medications for non-FDA-approved use.
- ***Drugs* which are not *medically necessary* for the treatment of an *illness*, *injury* or *pregnancy*.**
- **Fertility medications.**
- **Fluoride.**
- **Growth hormones.**
- **Non-legend *drugs***, other than insulin.
- **Provided in or through a *Physician's* office** (*drugs* intended for use in a setting other than the *physician's* office).
- **Cosmetic for Hair loss including but not limited to Rogaine.**
- **Smoking cessation products**.
- **Therapeutic devices** or appliances, support garments, and other non-medical substances.]
- **Vitamins**, except prenatal and pediatric.

- **Workers' Compensation**: prescriptions which an eligible person is entitled to receive, without charge, under any workers' compensation law, or under any municipal, state or federal program.

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"Lines Crossed: Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?"

Testimony of Dr. Samuel W. "Dub" Oliver
President, East Texas Baptist University,
Marshall, Texas
Before the
Committee on Oversight & Government Reform
U.S. House of Representatives

February 16, 2012

Good afternoon Chairman Issa and Ranking Member Cummings.

I appreciate your invitation to share my concerns about this serious threat to religious liberty. My name is Dub Oliver and I serve as the President of East Texas Baptist University in Marshall, Texas, a Christ-centered university founded in 1912.

I would like to raise four main points during my testimony this morning.

1. **East Texas Baptist University has a religious objection to this mandate, and this mandate violates our constitutional rights.**

Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe upon religious liberty. America's first Baptist leader, Roger Williams, had to flee Massachusetts and found a colony in Providence, Rhode Island, because his religious beliefs were not tolerated.

But it's not just about us. Baptists are alarmed whenever any religious group's rights are threatened. As the famous Baptist preacher, George W. Truett once said, "A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else."

I would be testifying here even if this mandate only affected my Catholic neighbors. But I must point out that this is not just a Catholic issue. While many Christians do not share the Catholic beliefs against contraception, there is wide agreement that abortion is wrong. And we believe, based on the Bible, that life begins at conception. The Administration's mandate covers emergency contraceptives such as Plan B and ella, which even this Administration admits interfere with a human embryo.

Our faith and the most recent science tells us that these drugs cause abortions. But under the Administration's mandate, my university will be required to buy insurance so that our employees can obtain these drugs for free, as if these drugs are no different than penicillin. We believe that is wrong.

2. We are offended that this Administration says that we aren't "religious" enough to have our religious beliefs respected.

Last Friday, the Administration gave final approval to a rule that includes the narrowest definition of a religious organization ever to appear in federal law. ETBU does not qualify because we teach and serve non-Christians (we accept students of all faiths and students of no faith).

The President has now promised that he will someday propose another regulation that will protect

groups that the government says aren't religious enough for an exemption, but still religious enough for some accommodation.

Why is the government creating different classes of religious groups and assigning each group different rights? That is not the government's job. The First Amendment is designed precisely to stop the government from this sort of picking and choosing.

3. This issue is not about women's health.

This is about whether the government can get away with trampling on the rights of religious organizations.

It's ridiculous to claim that organizations like mine don't care about women's health. As far as I am aware, no religious group objects to most of the preventative services in the mandate. In fact, we already cover preventative services, including contraceptives, under our employee health plan. We simply object to a few drugs, which the government calls contraceptives, because we believe they cause abortions.

Additionally, I've heard it suggested that this mandate is necessary to increase access to contraception. The President said last Friday that close to 99% of women use contraception. I don't know if that number is true, but surely if the President is quoting this number he knows there is no problem accessing these drugs.

This issue is not about women's health, it is about religious liberty. It is about whether the government will force religious people and organizations to do something they believe is wrong. Everyone here

wants women to have access to quality health care. What we are asking is that our religious views be respected.

4. If the government is allowed to go down this road, where will it end?

To close, perhaps the most frightening aspect of this entire episode for ETBU is that we have no idea where this road will end. Today, the Administration is trying to force us to provide our employees with abortion causing drugs. What's next?

If the government can force Catholic monks to dispense birth control, what can't the government do? If the government can decide that ETBU is not religious enough to have the right to religious liberty, what can't the government do? If this administration can just decide that religious beliefs are less important than its chosen policy goals, what can't it do?

These questions are alarming. And that is why people from all across the spectrum are joining together out of concern that this mandate threatens to erode one of our most precious rights, our religious liberty, guaranteed to us by the First Amendment. I urge this Committee and Congress to act to ensure religious liberty for those of us at East Texas Baptist University, and for all Americans.

EAST TEXAS BAPTIST UNIVERSITY

June 19, 2012

Submitted Electronically

TO: Secretary Kathleen Sebelius
Department of Health and Human Services

FROM: Samuel W "Dub" Oliver, Ph.D.
President /s/ Samuel W "Dub" Oliver

SUBJECT: CMS-9968-ANPRM

I write on behalf of East Texas Baptist University to express our grave concern about the regulations regarding certain preventive health services under provisions of the Patient Protection and Affordable Care Act (Affordable Care Act) including the proposed amendments published as final regulations February 15, 2012.

Our institution objects to the mandate for several reasons. While the use of the term "accommodation" has created the impression that the Administration has alleviated the concerns of the religious community, nothing could be further from the truth. The proposed accommodation fails to address the violation of religious liberty at the heart of the HHS mandate.

We are offended that this Administration says that we aren't religious enough to have our beliefs respected. The Administration has given final approval to a rule that includes the narrowest

definition of a religious organization ever to appear in federal law or rule making. East Texas Baptist University does not qualify for the religious exemption because we teach and serve non-Christians (we accept students of all faiths and students of no faith). The Administration's definition of religious groups undermines a fundamental truth of our faith, our call to go into all the world serving, teaching, and preaching the gospel. The Administration's definition of religious activity is also directly contrary to the mission of East Texas Baptist University because we believe that faith can and should be integrated with all things and our goal is to teach our students to live out their faith in all aspects of their lives.

Why is the government creating different classes of religious groups and assigning each group different rights? That is not the government's job. The First Amendment is designed precisely to stop the government from this sort of picking and choosing. East Texas Baptist University objects to the creation. in federal law, of two classes of religious organizations (churches dedicated to worship and religious training, which are fully exempt, and religious organizations like ours, dedicated to serving those outside our faith community, whose conscience concerns receive less protection). The best corrective action the Administration can take is to extend to faith-based organizations the same exemption that the regulations currently grant to churches. This would bring the regulations in line with the long standing, respected, and court tested provisions of Title VII of the 1964 Civil Rights Act [§§702, 703(e)] which provide a specific employment exemption for

every kind of religious organization, whether they be defined as "a religious corporation, association, educational institution, or society."

Additionally, East Texas Baptist University objects, for religious and moral reasons, to including abortifacients in our health plan. We believe, based on the Bible, that life begins at conception, and that abortion on demand is wrong. We object to the Administration's mandated coverage of emergency contraceptives such as Plan B (the morning after pill) and *ella* (the week after pill), which even this Administration admits interfere with a human embryo. Our faith and the most recent science tell us that these drugs cause abortions. However, under the Administration's mandate, our University will be required to buy insurance so that our employees can obtain these drugs for free, as if these drugs are no different than penicillin. We believe that is wrong.

Further, we object to an "accommodation" in which the insurance company will provide abortifacients to our employees. As a self-funded plan, we are the insurer. To act as though the costs associated with morally objectionable drugs would not be directly contributed by the institution is to demonstrate a fundamental lack of understanding of markets for goods and services.

Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe upon religious liberty. America's first Baptist leader, Roger Williams, had to flee Massachusetts and found a colony in Providence, Rhode Island, because his religious beliefs were not tolerated. But it's not just about us. Baptists are

alarmed whenever any religious group's rights are threatened. As the famous Baptist preacher, George W Truett once said, "A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else." We stand in solidarity with other religious communities that have deep moral objections to the use of contraceptives and abortifacient drugs.

East Texas Baptist University cares deeply about the health of our employees – women and men alike. This issue is not about women's health, it is about religious liberty. It is about whether the government will force religious people and organizations to do something they believe to be wrong. If the government is allowed to go down this road, where will it end? Today, the Administration is trying to force us to provide our employees with abortion-causing drugs. What's next?

If the government can force Catholic monks to dispense birth control, what can't the government do? If the government can decide that East Texas Baptist University is not religious enough to have the right to religious liberty, what can't the government do? If this Administration can just decide that religious beliefs are less important than its chosen policy goals, what can't it do?

These questions are alarming. And that is why people are joining together out of concern that this mandate threatens to erode one of our most precious rights, our religious liberty, guaranteed to us by the First Amendment. I urge you and your colleagues to

act to ensure religious liberty for those of us at East Texas Baptist University, and for all Americans.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

EAST TEXAS BAPTIST UNIVERSITY, and HOUSTON BAPTIST UNIVERSITY, *Plaintiffs,* v. KATHLEEN SEBELIUS, *et al.* *Defendants.*	Civil No. 12-3009 **SUPPLEMENTAL DECLARATION OF SAMUEL W. OLIVER**

Supplemental Declaration of Samuel W. Oliver, Ph.D. President, East Texas Baptist University

1. My name is Samuel W Oliver. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current President of East Texas Baptist University ("East Texas Baptist").

2. I make this declaration as a supplement to my declaration of August 30, 2013 ("First Oliver Declaration").

3. My prior declaration set forth East Texas Baptist's religious beliefs concerning the God-given worth of human beings from conception to death, and its objection to deliberately taking any action that

would facilitate access to abortion-causing drugs and devices. *See* First Oliver Declaration at paras. 16-26.

4. My prior declaration also stated that "East Texas Baptist is self-insured." First Oliver Declaration at para. 29.

5. As I stated in my prior declaration, the Mandate would require East Texas Baptist to execute and deliver a self-certification form to its third party administrator, Mutual Assurance Administrators. First Oliver Declaration at para. 46-47 I have now reviewed the self-certification form which has been submitted to the Court as Exhibit E-1.

6. East Texas Baptist's religious beliefs prohibit me, as President of East Texas Baptist, from authorizing anyone to arrange for or make payments for abortion-causing contraceptives, or taking action that triggers the provision of abortifacients, or is the but-for cause of the provision of abortifacients. Under Baptist religious principles, I simply cannot:

A. Sign the self-certification form that on its face authorizes another organization to deliver abortion-causing contraceptives to East Texas Baptist's employees and other plan beneficiaries;

B. Deliver the self-certification form to another organization that could then rely on it as an authorization to deliver these abortion-causing contraceptives to East Texas Baptist's employees and other plan beneficiaries;

C. Agree to refrain from speaking to that other organization and instructing or asking it not to deliver abortion-causing contraceptives to East

Texas Baptist's employees and other plan beneficiaries;

D. Create a provider-insured relationship (between our plan's beneficiaries and our third party administrator), the sole purpose of which would be to provide abortifacients;

E. Participate in a scheme, the sole purpose of which is to provide abortifacients to East Texas Baptist plan employees or other plan beneficiaries.

Yet the government requires me to do all of these things, or face massive penalties.

7. On the front of the form, East Texas Baptist must certify its objection to "providing coverage for some or all of any contraceptive services." Ex. E-1 at 1.

8. On the back of the form, the government states that East Texas Baptist "or its plan must provide a copy of this certification to a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement." Ex. E-1 at 2.

9. Also on the back of the form, there is a "Notice to Third Party Administrators of Self-Insured Health Plans," which states that the form "constitutes notice to the third party administrator that [t]he obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A," and that "[t]his certification is an instrument under which the plan is operated." Ex. E-1 at 2.

10. It is my understanding that the final rules prevent East Texas Baptist from telling any third party administrator to disregard the instructions on the form. Specifically, the final rules state that East Texas Baptist "must not, *directly or indirectly*, seek to influence the third party administrator's decision" to "provide or arrange separate payments for contraceptive services for participants or beneficiaries." 26 C.F.R. § 54.9815–2713A(b)(3) (emphasis added).

11. Thus, providing a third party administrator with this form, as the "accommodation" requires, will be construed by the third-party administrator as an authorization to provide or pay for abortion-causing contraceptives.

12. The Mandate forces me to violate my beliefs and the beliefs of East Texas Baptist. My faith forbids me from participating in this scheme.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 14, 2013

/s/ Samuel W. Oliver, Ph.D.
Samuel W. Oliver, Ph.D.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

EAST TEXAS BAPTIST UNIVERSITY, and HOUSTON BAPTIST UNIVERSITY, *Plaintiffs,* v. KATHLEEN SEBELIUS, et al., *Defendants.*	Civil No. 12-3009 **DECLARATION OF DR. ROBERT B. SLOAN**

DECLARATION OF DR. ROBERT B. SLOAN PRESIDENT, HOUSTON BAPTIST UNIVERSITY

1. My name is Robert B. Sloan. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current President of Houston Baptist University ("Houston Baptist"). I have served as Houston Baptist's President since September 1, 2006.

2. Like other employees of Houston Baptist, my family and I depend upon Houston Baptist's health insurance. I make this declaration not only as a college president, but as an employee, a husband and father. The loss of Houston Baptist's insurance plan would not only be a professional crisis, but a deep personal concern for my family.

3. I understand that Houston Baptist will face nearly $13 million in annual fines—along with potential penalties and lawsuits—if it continues to

follow its religious beliefs by refusing to offer health insurance that covers abortion-causing drugs and devices. As a college president, I know the kind of strain that this would place on a small liberal arts college. As the president of a Christian college, I know that our responsibility is to the faith that animates us, the reason Houston Baptist exists.

I. Houston Baptist's history and beliefs

4. Houston Baptist is a Christian liberal arts college in Houston, Texas that was founded in 1960 by the Baptist General Convention of Texas. Houston Baptist Website – About – History. A true and complete copy of the sections of Houston Baptist's website cited in this Declaration is attached as Exhibit B-1.

5. Houston Baptist's theological heritage is with Texas Baptists, and through its affiliation with the Baptist General Convention of Texas, it is also connected with the national Southern Baptist Convention.

6. Houston Baptist's mission is "to provide a learning experience that instills in students a passion for academic, spiritual, and professional excellence as a result of our central confession, 'Jesus Christ is Lord.'" Houston Baptist 2012-13 Student Handbook at 12 ("Student Handbook," 84 p.). A true and complete copy of the sections of the Student Handbook cited in this Declaration is attached as Exhibit B-2.

7. Today, Houston Baptist is a thriving academic community, serving over 2,800 students in 33 undergraduate degree programs and 15 graduate degree programs.

8. Houston Baptist is guided by its commitment to "stand as a witness for Jesus Christ." To that end, since 1974, Houston Baptist's bylaws have required that "all those who become associated with Houston Baptist University as a trustee, officer, member of the faculty or of the staff, and who perform work connected with the educational activities of the University, must believe in the divine inspiration of the Bible, both the Old Testament and New Testament, that man was directly created by God, the virgin birth of Jesus Christ, our Lord and Savior, as the Son of God, that He died for the sins of all men and thereafter arose from the grave, that by repentance and the acceptance of and belief in Him, by the grace of God, the individual is saved from eternal damnation and receives eternal life in the presence of God " Ex. B-2 (Student Handbook at 12).

9. Houston Baptist welcomes students of all religious backgrounds. But because Houston Baptist is a distinctively Christian community, all students who enroll at Houston Baptist are expected to abide by the Student Code of Conduct, which reflects Houston Baptist's commitment to the sanctity of life from conception to death. Ex. B-2 (Student Handbook at 54).

10. Houston Baptist's mission as an academic community is not merely the transmission of information; its goal is to "express Christ's Lordship as a function of its academic mission." The Ten Pillars: A 12 Year Vision for the Future of Houston Baptist at 4 ("Ten Pillars," approx. 30 p.). A true and complete copy of the sections of Ten Pillars cited in this Declaration is attached as Exhibit B-3.

II. Houston Baptist's Beliefs and Teachings on Abortion

11. Houston Baptist affirms that Scripture calls Christians to uphold the God-given worth of human beings, as the unique image-bearers of God, from conception to death. As Genesis 1 says, "God created mankind in his own image." Genesis 1:27a (NIV). And as Psalm 139 says, "For you [God] created my inmost being; you knit me together in my mother's womb. all the days ordained for me were written in your book before one of them came to be." Psalm 139:13, 16 (NIV).

12. The 2000 Baptist Faith & Message, a statement of "doctrines essential to the Baptist tradition of faith and practice" puts it this way: "[t]he sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love." 2000 Baptist Faith & Message (8 p.). A true and complete copy of the sections of the 2000 Baptist Faith & Message cited in this Declaration is attached as Exhibit B-4.

13. Houston Baptist affirms that Scripture condemns the taking of innocent human life (Exodus 20:13 (NIV)) and commands Christians to protect the weak and vulnerable. As the Scriptures say, we are to "[d]efend the weak and the fatherless," "[r]escue the weak and the needy," and "speak up for those who cannot speak for themselves." Psalm 82:3-4b (NIV); Proverbs 31:8a (NIV). And as the 2000 Baptist Faith & Message says, "We should speak on behalf of the unborn and contend for the sanctity of

all human life from conception to natural death." Ex. B-4.

14. Houston Baptist's beliefs about the sanctity of life are reflected in its requirements for faculty, all of whom are expected to affirm and teach that human life exists from conception to natural death, that the dignity of life is a gift from God, and that as a result abortion, except in cases where it is necessary to save the physical life of the mother, is sin.

15. Houston Baptist's beliefs about the sanctity of life are also reflected in its Student Code of Conduct, which affirms that Houston Baptist "embraces a biblical position which honors the sanctity of life," and "cannot support actions which encourage or result in the termination of human life through suicide, euthanasia, or abortion-on-demand." As a result, when students face a crisis pregnancy, "the campus community is prepared to stand with both the father and mother of the unborn child" and is "committed to assisting the student(s) with" alternatives to abortion in a way that is "supportive and redemptive." Ex. B-2 (Student Handbook at 57).

16. It is a violation of Houston Baptist's teachings and religious beliefs to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services.

17. Houston Baptist has a sincere religious objection to providing coverage for the emergency contraceptive drugs Plan B and Ella, since it believes those drugs could prevent a human embryo—which it understands to include a fertilized egg before it implants in the uterus—from implanting in the wall

of the uterus, causing the death of the embryo. The same objection applies to abortion-causing IUDs.

18. Houston Baptist considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

19. Therefore it is a violation of Houston Baptist's teachings and religious beliefs for it to deliberately fund, sponsor, underwrite, or otherwise facilitate access to Plan B and Ella, or abortion-causing IUDs.

20. It is similarly a violation of Houston Baptist's religious beliefs to deliberately take any action (including providing access to health insurance) that would facilitate access to abortion-causing drugs, abortion procedures, and related services, even if those items were paid for by an insurer or a third party administrator and not by Houston Baptist.

21. As the Ethics & Religious Liberty Commission—the public policy arm of the Southern Baptist Convention—has said, requiring employers to provide "free access to abortion-inducing drugs like Ella and Plan B (the "morning after" pill), [and] abortion-causing IUDs will force millions of Southern Baptists and other people of faith to violate their God-given and constitutionally-protected freedom of religion and conscience." Ethics & Religious Liberty Commission HHS Fact Sheet ("ERLC Fact Sheet," 2 p.). A true and complete copy of the sections of the ERLC Fact Sheet cited in this Declaration is attached as Exhibit B-5.

22. Consistent with these religious beliefs, Houston Baptist's employee health benefit plan does not cover abortions or emergency contraception such as Plan B, Ella, or abortion-causing IUDs.

GuideStone Health Choice 2000 Plan Summary at 2, 4 ("GuideStone Plan Summary," 6 p.); GuideStone Preventive Care Schedule at 4 (4 p.). A true and complete copy of the sections of the GuideStone Plan Summary cited in this Declaration is attached as Exhibit B-6. A true and complete copy of the sections of the GuideStone Preventive Care Schedule cited in this Declaration is attached as Exhibit B-7.

III. Houston Baptist's health benefits and practices

23. As part of its religious convictions, Houston Baptist promotes the well-being and health of its employees. This includes provision of generous health services and health benefits for its employees.

24. Houston Baptist has about 355 full-time and 118 part-time employees. All of these employees believe and teach the historic Christian message that salvation is found through Jesus Christ. The overwhelming majority of these full-time employees and their families rely upon Houston Baptist's health benefits.

25. Houston Baptist's health benefits plan ("Plan") is provided through GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone").

26. Started in 1918 to provide financial relief to aging ministers and their families, GuideStone's mission is "to assist churches, denominational entities, and other evangelical ministry organizations by making available" a variety of retirement, investment, and insurance programs. Meet Southern Baptists, Your GuideStone Financial Resources at 1 ("GuideStone Brochure," 2 p.). A true and complete

copy of the sections of the GuideStone Brochure cited in this Declaration is attached as Exhibit B-8.

27. GuideStone is a church health plan. "Among the oldest health plans in the nation, church health plans are self-funded, multiple employer health plans operated by not-for-profit church benefits boards" and given a special status by the IRS. GuideStone PPCA Overview at 3 (16 p.). A true and complete copy of the sections of the GuideStone PPCA Overview cited in this Declaration is attached as Exhibit B-9.

28. Although GuideStone provides women's preventive services—including most FDA-approved contraceptives—without cost-sharing, GuideStone "does not provide coverage for abortions and abortion-causing drugs, as this violates [its] Biblical convictions on the sanctity of life." Ex. B-9 (GuideStone, PPCA Overview at 5).

29. Thus, Houston Baptist's Plan excludes abortions and emergency contraceptives, including Plan B, Ella, and abortifacient IUDs.

30. Houston Baptist's Plan covers other types of contraceptives. Houston Baptist does not have religious objections to non-abortion-causing forms of contraception.

31. I have been informed that Houston Baptist's Plan does not meet the definition of a "grandfathered" plan under 42 U.S.C. § 18011 and 75 Fed. Reg. 41,726, 41,731 (2010).

32. Houston Baptist wishes to continue to provide high-quality, affordable health benefits for its employees. Doing so is consistent with our religious

commitment to support our faculty. staff, and their families.

33. If Houston Baptist had to terminate the Plan and stop offering health benefits, it would be a serious hardship on most faculty and staff, including myself.

34. If Houston Baptist had to terminate the Plan and stop offering health benefits, it would suffer serious competitive disadvantages in recruiting and retaining faculty and staff.

35. If Houston Baptist had to terminate the Plan and stop offering health benefits, it is inevitable that, due to the loss of competitive advantage, the quality of its programs and instruction would suffer.

IV The final form of the Mandate and Houston Baptist's choice

36. The regulations imposing these requirements ("Mandate") force Houston Baptist to provide access to abortion-causing drugs, including Plan B, Ella, and abortion-causing IUDs, in violation of Houston Baptist's religious beliefs. The Mandate also forces Houston Baptist to provide access to education and counseling concerning abortion that directly conflicts with Houston Baptist's religious beliefs and teachings.

37. Providing these drugs, counseling, and education is incompatible and irreconcilable with Houston Baptist's religious beliefs, express messages, and speech.

38. Providing these drugs, counseling, and education is also incompatible and irreconcilable with the religious beliefs, express messages, and speech of

Houston Baptist's health benefit provider, GuideStone.

39. I am aware of the Mandate's exemption provision for religious employers. Houston Baptist cannot qualify for this exemption. Houston Baptist is not a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended. Specifically, it is not a church, an integrated auxiliary of a church, a convention or association of churches, or a religious order.

40. Because Houston Baptist does not qualify for an exemption to the Mandate, we sincerely hoped the U.S. Department of Health and Human Services ("HHS") would decide to broaden the exemption to cover religious institutions like Houston Baptist. However, HHS did not do so.

41. On July 2, 2013, HHS published its final amendments to the Mandate. 78 Fed. Reg. 39,870 ("Final Rule"). Despite over 400,000 comments filed by members of the public, HHS did not abolish the distinction between churches and religious institutions like Houston Baptist. Instead, HHS adopted an "accommodation" that requires Houston Baptist to play a central role in facilitating access to abortion-causing drugs and devices by—among other things—finding and designating a third party administrator to provide abortion-causing drugs and devices on our behalf.

42. The Final Rule also extends the current safe harbor—which is a temporary halt on government (but not private) enforcement of the Mandate—through the end of 2013. 78 Fed. Reg. at 39889.

V. The effects of the "accommodation" on Houston Baptist

43. An organization is eligible for the accommodation if it (1) "opposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." 78 Fed. Reg. at 39874. I understand that Houston Baptist is an "eligible organization."

44. The self-certification must be executed "prior to the beginning of the first plan year to which the accommodation is to apply." 78 Fed. Reg. at 39875.

45. Thus, Houston Baptist would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014. 78 Fed. Reg. at 39875.

46. The Mandate does not provide any guidance for "eligible organizations" that are insured through church health plans like GuideStone. For example, it is not clear whether Houston Baptist is required to deliver its self-certification to GuideStone, which provides Houston Baptist with its health plan, or Highmark Blue Cross Blue Shield ("Highmark"), the third party administrator that GuideStone has contracted with to administer its church health plan. Either course of action would violate Houston Baptist's religious beliefs.

47. If Houston Baptist delivered its self-certification to GuideStone, Houston Baptist would be asking another Baptist organization to violate Baptist teaching and deliver morally problematic

drugs to its employees. This is an independent burden on Houston Baptist's conscience.

48. Delivering the self-certification to GuideStone's third party administrator Highmark is also morally unacceptable, because it forces Houston Baptist to enter into a new relationship with GuideStone's third party administrator for the specific purpose of providing objectionable drugs.

49. In either event, delivery of the self-certification would trigger an obligation to begin providing Houston Baptist employees with payment coverage for abortion-causing drugs and devices. Houston Baptist would be arranging for this coverage to be "outsourced" to another entity.

50. Houston Baptist's religious beliefs preclude it from soliciting, contracting with, or designating a third party to provide the objectionable drugs and services. From Houston Baptist's perspective, forcing GuideStone or Highmark to provide free access to abortifacient services is no different than directly providing that access. Houston Baptist cannot outsource its conscience.

51. The Mandate assumes that once it has received the self-certification, Highmark will be willing to make "separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. at 39880.

52. However, I understand that HHS has acknowledged that "there is no legal obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities." 78 Fed. Reg. at 39880.

53. At this time, I do not know whether Highmark will be willing to carry out the obligations of the Mandate.

54. Moreover, the Mandate requires that, even if the third party administrator consents, the religious organization—via its self-certification—must expressly designate the third party administrator as "an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries." 78 Fed. Reg. at 39879.

55. The self-certification must specifically notify the third party administrator of its "obligations set forth in the[] final regulations, and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA." 78 Fed. Reg. at 39879.

56. Because the designation makes the third party administrator a plan administrator with fiduciary duties, the payments for contraceptive and abortifacient services would be payments made under Houston Baptist's health benefits plan.

57. Because Houston Baptist would be required to identify and designate a third party administrator willing to administer the contraceptive and abortifacient services, Houston Baptist's religious beliefs preclude it from complying with the accommodation.

58. Houston Baptist would have to identify its employees to the third party administrator for the distinct purpose of assisting the government's scheme

to provide free access to contraceptive and abortifacient services.

59. The third party administrator's obligation to make direct payments for contraceptive services and abortion services would presumably continue only "for so long as the participant or beneficiary remains enrolled in the plan." 78 Fed. Reg. 39876 (discussing insured plans).

60. Thus, Houston Baptist would have to coordinate with its third party administrator regarding when it was adding or removing employees and beneficiaries from its healthcare plan and, as a result, from the contraceptive and abortifacient services payment scheme.

61. Third party administrators would be required to notify plan participants and beneficiaries of the contraceptive and abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from, any application materials distributed in connection with enrollment" in a group health plan. 78 Fed. Reg. at 39880.

62. This would also require Houston Baptist to coordinate the notices with its third party administrators.

63. Thus, even under the accommodation, Houston Baptist and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to contraceptive and abortifacient services.

64. I understand that the Mandate sets forth complex means through which a third party administrator may seek to recover its costs incurred

in making payments for contraceptive and abortifacient services.

65. But I also understand that there is no way to ensure that the cost of administering the abortifacient services would not be passed down to Houston Baptist through increased fees.

VI. The Mandate's impact on Houston Baptist

66. Houston Baptist will be subject to enforcement under the Mandate—enforcement that includes fines, other regulatory penalties, and potential lawsuits—starting on January 1, 2014. The only way Houston Baptist could avoid those harsh consequences would be to publicly abandon its faith commitments and violate its religious convictions. This is no choice at all, because Houston Baptist's faith is central to its identity, its mission, and its very existence.

67. If Houston Baptist chooses to violate the law—by ceasing to offer employee health insurance altogether, or by offering insurance without the objectionable coverage—then it will be penalized with fines of $2000 per full-time employee per year, or roughly $710,000 per year, every year.

68. Although the government has recently announced that it will postpone implementing the annual fine of $2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015.

69. In addition to the $2000 per-employee penalty, Houston Baptist could also face tax penalties of $100 per day "for each individual to whom such failure relates" 26 U.S.C. § 4980D(b)(1), for offering insurance that fails to comply with the ACA, which

would come to $12,957,500 per year for our 355 full-time employees alone.

70. A nearly $13 million fine would be devastating for nearly any college, but it is particularly devastating for a small liberal arts college like Houston Baptist.

71. I also understand that Houston Baptist could also face regulatory action and lawsuits under ERISA.

72. The Mandate imposes a burden on Houston Baptist's employee recruitment and retention efforts by creating uncertainty as to whether Houston Baptist will be able to offer health benefits beyond 2013.

73. The Mandate places Houston Baptist at a competitive disadvantage in its efforts to recruit and retain employees.

74. The Mandate forces Houston Baptist to choose between, on the one hand, violating its religious beliefs, and, on the other hand, incurring substantial fines and terminating its employee health benefits.

75. Houston Baptist wants to continue to provide high-quality health benefits for its employees. It has no objections to providing almost all of the mandated services, including gestational diabetes screenings, well-woman visits, and most prescription contraceptives. It asks only that it be permitted to follow its beliefs by continuing to refuse to pay for, or provide access to, abortifacients.

76. Houston Baptist does not have a real choice in this matter. Its religious beliefs are deep, longstanding, and sincere.

VII. The need for immediate action

77. Houston Baptist's plan year begins on January 1, 2014. Houston Baptist must begin planning now for the 2014 insurance plan year.

78. Every fall, Houston Baptist works with GuideStone to set the terms of the Plan for the upcoming year. The process is time consuming: Houston Baptist's HR department must negotiate and work with GuideStone on plan changes and on the production and distribution of plan materials and employee health benefit cards. This process typically takes Houston Baptist two months.

79. Houston Baptist plans to begin the planning process in August, to give itself adequate of time to make any necessary changes before the January 2014 plan year begins. Therefore any major changes must be known to Houston Baptist by September at the latest.

80. Houston Baptist needs to implement any major changes prior to November 4, 2013, the first date of the two-week open enrollment period for employees and their families.

81. Houston Baptist needs immediate relief from the Mandate in order to arrange for and continue providing employee health benefits. Delay could lead to a lapse in coverage. Denial of immediate relief will force Houston Baptist to choose between its religious beliefs and the prospect of crippling fines, regulatory penalties, and lawsuits.

82. The consequences for Houston Baptist's employees would be severe. If my family's insurance plan is cancelled, we will be forced to seek expensive individual policies on the private market.

83. I am not alone. As Houston Baptist confronts the looming deadline, I have been approached by employees who have expressed fears for themselves and their families about what would happen if Houston Baptist is forced to stop offering health insurance.

84. Not being covered by Houston Baptist's insurance would create serious hardship for many. Our employees include people battling cancer, people undergoing dialysis, and people with dependents who require repeated medical interventions. For these employees in particular, seeking insurance on the health insurance exchanges would present a significant burden.

85. I hope they will not have to make that choice. I hope that we will have relief from the Mandate prior to January 1.

I declare under penalty of perjury that the foregoing is true and correct. Executed on Thursday, August 30, 2013 in Houston, Texas.

/s/ Dr. Robert B. Sloan

Dr. Robert B. Sloan

[HOUSTON BAPTIST WEBSITE EXCERPTS]

HISTORY

Houston Baptist College was created by action of the Baptist General Convention of Texas on November 15, 1960, culminating many years of work and study. The aim of our founders was to establish a Christian college of the highest order in the city of Houston that stressed quality of life as well as quality of learning.

In 1952, the Union Baptist Association authorized a committee to study the possibility of locating a Baptist college in Houston. With the assistance and encouragement of the Education Commission of the Baptist General Convention of Texas, the committee conducted a survey in 1955. Acting upon information obtained with the endorsement of the Education Commission, the Association approved the concept of establishing a new college. In 1956, the Executive Board of the Baptist General Convention of Texas agreed to support such a college when the College Committee of Union Baptist Association had succeeded in acquiring both (1) a satisfactory site for a campus of at least one hundred acres, and (2) a minimum corpus of at least three million dollars. Of this sum, one and a half million dollars would constitute a nucleus endowment fund; one and a half million dollars would be designated for a physical plant. The Union Baptist Association accepted these conditions and endorsed the requirements set up by the state Baptist convention.

In 1957, a Houston land developer, Frank Sharp, offered to sell Union Baptist Association 390 acres in southwest Houston for the construction of a college.

The Board of Governors of Rice University agreed to lend most of the money needed with the land as collateral. To complete the funding, twenty-five businessmen, since called "founders," pledged to be responsible for $10,000 each. Therefore, by 1958, a campus site of 196 acres was acquired in southwest Houston, and in 1960, the initial financial goal of repaying the loan was reached as a result of a campaign among the churches.

In 1960, the Baptist General Convention of Texas elected the first Board of Trustees. On November 15, 1960, the board approved and signed the college charter. The next day, this charter was ratified and recorded with the Secretary of State in Austin. The way was then cleared to select administrative officers, develop a suitable physical plant and design an appropriate academic program. Dr. W H. Hinton began service as the first President of the college on July 1, 1962.

The college opened in September 1963 with a freshman class of 193 students, a cluster of new buildings and thirty faculty. When classes began, only the Brown Academic Quadrangle and the campus dormitories were completed. A new class was added each year until the college attained a four-year program in 1966-67 By then, the full-time faculty had grown to fifty-four members, serving an enrollment of approximately 900 undergraduate students.

In 1973, Houston Baptist College officially became Houston Baptist University. And in 1977, the first master's degree program, the Master of Business Administration, was offered.

HBU has grown into a thriving community of faith and scholarship since its founding more than 50 years ago. And today, HBU has more than 2,500 students and offers in excess of 40 majors through its six colleges, including the Honors College added in 2008. The campus now holds 27 buildings, including three residence colleges, the Husky Village apartments and three museums.

Further Reading

Retired University professor Dr. Marilyn McAdams Sibley authored a history of the early years of the founding of the University, *To Benefit a University: The Union Baptist Association College Property Committee, 1958-1975.* A more complete history of the University covering the period from its chartering in 1960 to its fiftieth anniversary, *An Act of Providence*, was written by Dr. Don Looser, Vice President Emeritus, and published in 2011.

HBU complies with all applicable federal and state non-discrimination laws and does not engage in prohibited discrimination on the basis of race, color, nationality, or ethnic origin, gender, age, or disability in either employment or the provision of services.

Inquiries concerning the notice or the application of the laws referenced herein should be referred to the Director of Student Life.

The content of this handbook is subject to change when deemed necessary by the University to meet the evolving needs of students, the community and the institution. Changes will be noted in the online version of the handbook.

HBU Distinctives

Our Mission

The mission of Houston Baptist University is to provide a learning experience that instills in students a passion for academic, spiritual, and professional excellence as a result of our central confession, "Jesus Christ is Lord."

— Unanimously approved by the Board of Trustees, February 24, 2009

Our Values

The Preamble to the University By-Laws as stated below describes the distinctive nature of the institution.

The Houston Baptist University is a Christian liberal arts university dedicated to the development of moral character, the enrichment of spiritual lives, and the perpetuation of growth in Christian ideals.

Founded under the providence of God and with the conviction that there is a need for a university in this community that will train the minds, develop the moral character and enrich the spiritual lives of all people who may come within the ambit of its influence, HOUSTON BAPTIST UNIVERSITY shall stand as a witness for Jesus Christ expressed directly through its administration, faculty and students. To assure the perpetuation of these basic concepts of its founders, it is resolved that all those who become associated with Houston Baptist University as a trustee, officer, member of the faculty or of the staff, and who perform work connected with the educational activities of the University, must believe in the divine inspiration of

the Bible, both the Old Testament and New Testament, that man was directly created by God, the virgin birth of Jesus Christ, our Lord and Savior, as the Son of God, that He died for the sins of all men and thereafter arose from the grave, that by repentance and the acceptance of and belief in Him, by the grace of God, the individual is saved from eternal damnation and receives eternal life in the presence of God; and it is further resolved that the ultimate teachings in this University shall never be inconsistent with the above principles.

The University Vision:
The Ten Pillars: Faith and Reason in a Great City

HBU will fulfill its responsibility for the renewal of Christian higher education through a vision organized around Ten Pillars. These Ten Pillars are the reflection of envisioning sessions and conversations held with HBU faculty, staff, students, trustees, alumni, and selected members of the community. The ideas and initiatives listed in this vision document all have their roots in those sessions. While the Ten Pillars do not exhaustively list all the suggestions, or all of our plans, they do capture the spirit and direction of our university family's aspirations for HBU.

- Build on the Classics
- Recruit for National Influence
- Embrace the Challenge of Christian Graduate Education
- Establish a Residential Society of Learning

Student Code of Conduct

Preamble

Philosophical Approach

Houston Baptist University has chosen to set itself apart for the purpose of preparing students for meaningful lives and work and for service to God and the peoples of the world. The University is dedicated to the development of moral character, the enrichment of spiritual lives, and the perpetuation of growth in Christian ideals. Spiritual maturity, strength of character, and moral virtue are considered foundational for successful living. The University shall stand as a witness for Jesus Christ expressed directly through its administration, faculty, and students.

Students, by their voluntary membership in this Christian community, assume responsibility to abide by all the standards, rules, and regulations of the University, as well as to use personal discretion involving any activities which may be morally or spiritually destructive or reflect poorly on the campus community. All members of the campus community share mutual responsibility for confronting actions that violate established standards for conduct or reflect poorly on the University It is essential that this confrontation is exercised in a spirit of love and gentleness-a hallmark characteristic of biblical Christianity.

The Student Code of Conduct serves the educational mission of the University in achieving the aforementioned objectives. Community standards, policies and regulations, and the Student Discipline System are in place for the expressed purpose of moving students towards personal maturity and

creating an environment that is conducive to academic learning, personal development, and spiritual growth.

The Student Discipline System is an educational and restorative process, not a legal proceeding. The disciplinary process always attempts to confront misconduct in an educative posture that the student might learn from the experience, respond to the correction, and be reconciled to the community whenever possible. The disciplinary system provides University personnel opportunities to educate students and to help them attain better decision-making, character formation, and spiritual maturity. The effectiveness of these teachable moments requires that each student be treated with equal care, concern, honor, fairness, and dignity.

Article I: Definitions

1. The term "University" means Houston Baptist University.
2. The term "student" includes all persons taking courses at the University, either full-time or part-time, pursuing undergraduate or graduate studies. Persons who withdraw after allegedly violating the Student Code of Conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the University or who have been notified of their acceptance for admission are considered "students" as are persons who are living in University housing, although not enrolled in this institution. This Student Code of Conduct applies to the main campus, University-sponsored events, and activities at which the University is substantially represented.
3. The term "faculty member" means any person hired by the University to conduct classroom or teaching activities or who is otherwise considered by the University to be a member of its faculty.
4. The term "University official" includes any person employed by the University, performing assigned administrative or professional responsibilities.

B. Community Standards

"Community Standards" refer to general guidelines or biblical principles that are represented in University policies and expectations for the conduct of community members. They may be articulated in written or spoken directives or may be implicitly

understood as "common sense" or basic to Christian teaching or practice. The following Community Standards are not meant to be an exhaustive list, but rather touch on topics of particular concern, interest, or conflict with contemporary culture.

1. *Respect.* Students are expected to demonstrate respect for those in authority including faculty, staff, and student leaders/workers. Respect is also expected to be extended to policies, procedures and regulations established by the University for the orderly administration of University activities and the welfare of the members of the HBU community. Furthermore, respect for the rights and human dignity of others, especially in the conduct of relationships; Respect for the rights and needs of the community to develop and maintain an atmosphere conducive to academic study and personal development; and, Respect for Federal, State, and Local laws and ordinances is expected.
2. *Integrity and accountability.* Members of the campus community are expected to maintain lives of integrity regarding biblical principles and standards of conduct adopted by the campus community. The University firmly believes that mature individuals submit themselves to accountability within a community of persons and take responsibility for actions that violate that covenant relationship. Members are equally responsible to bring to bear accountability where there is knowledge that fellow members are violating community standards for conduct and should exercise such action in humility with concern for the offender.

3. *Affirmation of diversity.* The University recognizes the influence that diversity has in shaping the unique contributions of community members. The University is committed to affirming these contributions and creating opportunities for synergistic reasoning and insights. This commitment is based on a belief that community members should be able to maintain their unique distinctiveness while sharing mutual respect and dignity for the experiences and beliefs of others. Consistent with its educational objectives, the University refrains from endorsing or permitting conduct deemed to be in conflict with biblical principles or expressions of non-Christian religious worship or ceremony on University premises or at University-sponsored gatherings.

4. *Sanctity of life.* The University embraces a biblical position which honors the sanctity of life. Consequently, the University cannot support actions which encourage or result in the termination of human life through suicide, euthanasia, or abortion-on-demand. The University's belief in the sanctity of life influences its response to those students who are involved in a crisis pregnancy. The campus community is prepared to stand with both the father and mother of the unborn child as they consider the results of their actions and experience forgiveness that comes from genuine repentance. Subsequently, abortion is not advised or entertained as an alternative solution. The University is committed to assisting the student(s) with other alternatives. Continuity of

on-campus student residency will be considered in light of what is best for all those impacted by the pregnancy. As always, persons in such a crisis will find University officials supportive and redemptive.

THE TEN PILLARS
FAITH AND REASON IN A GREAT CITY

A 12 YEAR VISION FOR THE FUTURE OF HOUSTON BAPTIST UNIVERSITY

Preface to a Vision

This document contains Houston Baptist University's vision for the next 10-12 years. We have not limited our plans to incremental improvements, but have instead decided to reach for a space in American higher education that is almost unoccupied. We intend to build on our reputation as an outstanding, regional master's degree-granting institution to become a comprehensive national university firmly rooted in the Christian faith. Before we reveal our ideas for the future, I would like to first recall our beginnings.

In 1961, Stewart Morris and Rex Baker submitted the final draft of the preamble to the bylaws of what was then Houston Baptist College. One trustee described the preamble as the steel that makes the foundation of the university. The express desire of HBU's founders was to birth and nurture a university that would remain unequivocally wedded to the Christian faith. The current preamble, modified in only minor ways to reflect the transition from college to university and to be even clearer about the necessary Christian convictions of those who work for HBU, reads as follows:

Nature of the Institution

The Preamble to the University By-Laws as stated below describes the distinctive nature of the institution.

The Houston Baptist University is a Christian liberal arts university dedicated to the development of moral character, the enrichment of spiritual lives, and the perpetuation of growth in Christian ideals. Founded under the providence of God and with the conviction that there is a need for a university in this community that will train the minds, develop the moral character and enrich the spiritual lives of all people who may come within the ambit of its influence, HOUSTON BAPTIST UNIVERSITY shall stand as a witness for Jesus Christ expressed directly through its administration, faculty and students. To assure the perpetuation of these basic concepts of its founders, it is resolved that all those who become associated with Houston Baptist University as a trustee, officer, member of the faculty or of the staff, and who perform work connected with the educational activities of the University, must believe in the divine inspiration of the Bible, both the Old Testament and New Testament, that man was directly created by God, the virgin birth of Jesus Christ, our Lord and Savior, as the Son of God, that He died for the sins of all men and thereafter arose from the grave, that by repentance and the acceptance of and belief in Him, by the grace of God, the individual is saved from eternal damnation and receives eternal life in the presence of God; and it is further resolved that

the ultimate teachings in this University shall never be inconsistent with the above principles.

Amended by the Board of Trustees

February 22, 1974

Our historic preamble continues to be the source of our vitality and inspiration. The central confession of the New Testament, as reflected by the preamble, is that "Jesus Christ is Lord." Such a claim has deep implications not only for the church, but also for the institutions of higher learning to which the church has given birth. The Gospels, Acts, the Letters, and the Apocalypse all bear testimony to the foundational assertion that the same Jesus who was crucified has now been vindicated by the covenant God of Abraham, Isaac, and Jacob. Furthermore this resurrected One is now installed on a heavenly throne expressive of His universal sovereignty. All peoples, tongues, and nations fall under the sway of His Lordship, whether acknowledged or not. He is the One through whom God made the world, by whom all things are reconciled, and unto whom and for whom all of history will find its consummation (Ephesians 1:10).

To say "Jesus Christ is Lord" is not merely to affirm a religious confession, nor to say something only about an interior faith or personal, individualistic values. Rather, to say "Jesus Christ is Lord" is to make a statement that touches not only the private spiritual lives of believers, but encompasses all of the ranges of the created order, including the scope and breadth, as well as the complexities, of social, political, emotional, and physical experience. He is Lord, not only of the church, but over all things visible and invisible

(Colossians 1:16), and therefore there is no area of reality which is, or even can be, outside the sphere of His Lordship. For a university to express Christ's Lordship as a function of its academic mission is to embrace in principle, through research, teaching, and the learning community, all the questions, issues, and intricacies which curiosity and imagination can engender, from undergraduate through graduate experience.

Our vision for HBU brims with ideas, plans, and objectives, but we view it all as nothing if we follow the all-too-familiar path of gaining distinction at the price of the loss of our faith. For that reason, we have proposed a vision for a Christian university and not a university that happens to have denominational trappings ancillary to the core mission. We aspire to nothing less than becoming a university whose learning environment challenges every member of the community to academic excellence and authentic spirituality, both of which are consequences of our central confession: "Jesus Christ is Lord."

Robert B. Sloan, Jr.
President, Houston Baptist University

[Summary Plan Information]

Group Plans Heath Choice 2000: GuideStone Coverage Period: 01/01/2013 – 12/31/2013
Summary of Benefits and Coverage: What this Plan Covers & What it Costs
Coverage for: Individual/Family | Plan Type: PPO
This is only a summary. If you want more detail about your coverage and costs, you can get the complete terms in the policy or plan document at www.GuideStone.org/Summaries or by calling 1-888-98-GUIDE (1-888-984-8433).

Important Questions	**Answers**	**Why this Matters:**
What is the overall **deductible**?	In-network: **$2,000** person / **$4,000** family. Out-of-network: **$4,000** person / **$8,000** family. Doesn't apply to preventive care and co-pays.	You must pay all the costs up to the **deductible** amount before this plan begins to pay for covered services you use. Check your policy or plan document to see when the **deductible** starts over (usually, but not always, January 1st). See the chart starting on page 2 for how much you pay for covered services after you meet the **deductible**.
Are there other **deductibles** for	No.	You don't have to meet **deductibles** for specific services, but see the chart starting

specific services?		on page 2 for other costs for services this plan covers.
Is there an **out-of-pocket limit** on my expenses?	Yes. For in-network: **$5,000** person / family. For out-of-network: **$10,000** person / family.	The **out-of-pocket limit** is the most you could pay during a coverage period (usually one year) for your share of the cost of covered services. This limit helps you plan for health care expenses.
What is not included in the **out-of-pocket limit**?	Premiums, balance-billed charges, health care this plan doesn't cover, deductibles and co-pays.	Even though you pay these expenses, they don't count toward the **out-of-pocket limit**.
Is there an overall annual limit on what the plan pays?	No.	The chart starting on page 2 describes any limits on what the plan will pay for *specific* covered services, such as office visits.
Does this plan use a **network** of **providers**?	Yes. See **www.highmarkbcbs.com or call 1-800-810-2583** for a list of	If you use an in-network doctor or other health care **provider**, this plan will pay some or all of the costs of covered services. Be aware, your in-network doctor or

	participating providers.	hospital may use an out-of-network **provider** for some services. Plans use the term in-network, **preferred**, or participating for **providers** in their **network**. See the chart starting on page 2 for how this plan pays different kinds of **providers**.
Do I need a referral to see a **specialist**?	No. You don't need a referral to see a specialist.	You can see the **specialist** you choose without permission from this plan.
Are there services this plan doesn't cover?	Yes.	Some of the services this plan doesn't cover are listed on page 4. See your policy or plan document for additional information about **excluded services**.

Questions: Call 1-888-98-GUIDE (1-888-984-8433) or visit us at www.GuideStoneInsurance.org.

If you aren't clear about any of the bolded terms used in this form, see the Glossary. You can view the Glossary at www.GuideStone.org/Summaries or call **1-888-98-GUIDE (1-888-984-8433)** to request a copy.

- **Co-payments** are fixed dollar amounts (for example, $15) you pay for covered health care, usually when you receive the service.
- **Co-insurance** is *your* share of the costs of a covered service, calculated as a percent of the **allowed amount** for the service. For example, if the plan's **allowed amount** for an overnight hospital stay is $1,000, your **co-insurance** payment of 20% would be $200. This may change if you haven't met your **deductible**.
- The amount the plan pays for covered services is based on the **allowed amount**. If an out-of-network **provider** charges more than the **allowed amount**, you may have to pay the difference. For example, if an out-of-network hospital charges $1,500 for an overnight stay and the **allowed amount** is $1,000, you may have to pay the $500 difference. (This is called **balance billing**.)
- This plan may encourage you to use in-network **providers** by charging you lower **deductibles**, **co-payments** and **co-insurance** amounts.

Common Medical Event	Services You May Need	Your cost if you use an		Limitations & Exceptions
		In-network Provider	Out-of-network Provider	
If you visit a health care **provider's** office or clinic	Primary care visit to treat an injury or illness	$25 co-pay/visit	50% co-insurance	Includes one comprehensive annual eye exam.

	Specialist visit	$45 co-pay/visit	50% co-insurance	----------none----------
	Other practitioner office visit	$45 co-pay for chiropractor	50% co-insurance for chiropractor	Limited to 20 visits per coverage period.
	Preventive care/screening/ immunization	No charge	Not covered	See *Preventive Care Schedule* for covered services in-network. Abortive services and certain contraceptives are not covered.
If you have a test	Diagnostic test (x-ray, blood work)	20% co-insurance	50% co-insurance	If performed in a primary care or specialist office, primary care or specialist co-pay applies.
	Imaging (CT/PET scans, MRIs)	20% co-insurance	50% co-insurance	----------none----------
If you need drugs to treat your illness or condition	Generic drugs	$15 co-pay (retail)/ $35 co-pay (mail order)	100% of drug cost with reimbursement at plan costs	Covers up to a 30-day supply (retail) and a 90-day supply (mail order).

More information about **prescription drug coverage** is available at www.express-scripts.com	Preferred brand drugs	$35 co-pay (retail)/ $90 co-pay (mail order)	upon manual claim form submission.	You must pay the generic co-payment and the difference in the cost between the preferred/non-preferred drug and its generic equivalent if available. Certain contraceptives are not covered.
	Non-preferred brand drugs	$50 co-pay (retail)/ $125 co-pay (mail order)		
	Specialty drugs	$50 co-pay (mail order only)		Covers up to a 30-day supply.

Excluded Services & Other Covered Services:

Services Your Plan Does NOT Cover (This isn't a complete list. Check your policy or plan document for other *excluded services*.)

• Acupuncture	Experimental or investigational treatment	Private-duty nursing
Certain contraceptives	• Hearing aids	Private hospital room

Cosmetic surgery	• Infertility treatment	Routine foot care
Dental care (Adult)	• Long-term care	Weight loss program
Elective abortion		

Other Covered Services (This isn't a complete list. Check your policy or plan document for other covered services and your costs for these services.)

Bariatric surgery	Chiropractic care—limited to 20 visits per coverage period	• Non-emergency care when traveling outside the U.S.

Your Rights to Continue Coverage:

If you lose coverage under the plan, then, depending upon the circumstances, Federal and State laws may provide protections that allow you to keep health coverage. Any such rights may be limited in duration and will require you to pay a **premium**, which may be significantly higher than the premium you pay while covered under the plan. Other limitations on your rights to continue coverage may also apply.

For more information on your rights to continue coverage, contact the plan at 1-888-98-GUIDE (1-888-984-8433). You may also contact the U.S. Department of Labor, Employee

Benefits Security Administration at 1-866-444-3272 or *www.dol.gov/ebsa*, or the U.S. Department of Health and Human Services at 1-877-267-2323 x61565 or *www.cciio.cms.gov*.

Your Grievance and Appeals Rights:

If you have a complaint or are dissatisfied with a denial of coverage for claims under your plan, you may be able to appeal or file a grievance. For questions about your rights, this notice, or assistance, you can contact: 1-866-472-0924 or visitwww.highmarkbcbs.com.

Spanish Assistance (Asistencia en Espahol):

Para obtener asistencia en Espanol, llame al 1-888-98-GUIDE (1-888-984-8433).

To see examples of how this plan might cover costs for a sample medical situation, see the next page.

Preventive Care Schedule

Effective January 1, 2013

The plan pays for preventive care only when given by a network provider. For in-network preventive care, use your Highmark Blue Cross Blue Shield ID card.

Well child visits (birth – age 18)	Preventive schedule
• Wellness exam • Visual screening • Hearing screening	• Standard incremental infant check-ups for the first 12 months; every 12 months ages 1 18 • Every 12 months ages 3-5; then at ages 6, 8, 10, 12, 15 and 18 • Every 12 months ages 4-6; then at ages 8, 10, 12 and 15
Immunizations: Includes standard childhood immunizations	At scheduled ages for each childhood immunization

Adult (age 19+)	Preventive schedule
Physical examination	Every 12 months
Pelvic and breast examination	Every 12 months
Pap test	Every 12 months
Mammogram	Every 12 months after age 39
Urinalysis,	Every 12 months

venipuncture and CBC	
Lipid panel	Every 12 months
Glucose testing (for high-risk patients)	Every 3 years after age 45
Bone mineral density screening	Every 2 years if high risk for osteoporosis
Colorectal cancer screening	
♦ Fecal occult blood test	♦ As directed by a physician
♦ Screening with flexible sigmoidoscopy or double contrast barium enema	♦ Every 12 months after age 50 ♦ Every 5 years after age 50
♦ Colonoscopy	♦ Every 10 years after age 50 (or as recommended by your doctor if high risk)
Immunizations: Includes expanded age ranges for some immunizations	Expanded adult immunizations for at-risk patients

Maternity

You should expect to receive the following screenings and procedures:

- Hematocrit and/or Hemoglobin (Anemia)
- Urine culture & Sensitivity (C&S)
- Rh typing during your first visit
- Rh antibody testing for Rh-negative women
- Hepatitis B

In addition, your doctor may discuss breast feeding during weeks 28 through 36 and/or post-delivery, tobacco use and behavioral counseling to reduce alcohol use.

Note: This schedule is based on services required under the Patient Protection and Affordable Care Act of 2010 (PPACA), as amended, including expanded women's preventive health services such as approved contraceptives, gestational diabetes screening and breastfeeding support. GuideStone does not provide coverage for abortions or abortion-inducing drugs as this violates our Biblical convictions on sanctity of life. This schedule is reviewed and updated periodically based on the advice of the U.S. Preventive Services Task Force and updates according to clinical guidelines established by national medical organizations. Your specific needs for preventive services may vary according to your personal risk factors. Your doctor is always your best resource for determining if you're at increased risk for a condition. Some services may require prior authorization. If you have questions about this schedule or prior authorizations, please call the Member Service number on the back of your ID card.

Women's Health Preventive Schedule

Services	
Contraception and counseling	All women with reproductive capacity: patient education, counseling and certain Food and Drug Administration (FDA)-approved contraceptive methods*, including sterilization and procedures as prescribed
Well-woman visits	Up to 4 visits annually for adult women to obtain the recommended preventive

	services that are age and developmentally appropriate, including preconception and the first visit to determine pregnancy
Screenings/procedures	
Gestational diabetes screening	All women: between 24 and 28 weeks of gestation. High risk: at the first prenatal visit
Interpersonal and domestic violence screening and counseling	Annually
Lactation (breastfeeding) counseling, support and supplies	Comprehensive lactation support and counseling by a trained provider during pregnancy and/or in the postpartum period and costs for renting breastfeeding equipment

* **GuideStone will not provide coverage for abortion services or abortion-inducing drugs such as Ella and Plan B, as this violates our biblical convictions on sanctity of life. GuideStone covers certain non-abortive generic contraceptives under the *Preventive Care Schedule*.**

Because the Children's Health Insurance Program(CHIP) is a government sponsored program and not subject to PPACA, certain preventive benefits may not apply to CHIP members and / or may be subject to co-payments.

Prevention of Obesity

Obesity places individuals at risk for a number of chronic and debilitating diseases. Highmark is working with physicians, policymakers, The Children's Health Fund and representatives from the private sector to address the childhood obesity crisis and to create solutions to obesity-related problems. As part of Highmark's "Prevention of Obesity" initiative, the following benefits are part of our preventive schedule. For in-network services for the prevention of obesity, use your Highmark BCBS ID card.

Schedule for children	Preventative schedule
Children with a body mass index (BMI) in the 95th percentile are eligible for:	♦Two additional annual preventive office visits specifically for obesity ♦Two annual nutritional counseling visits specifically for obesity ♦One set of recommended laboratory studies
Children with a BMI in the 85th percentile are eligible for:	♦One additional annual preventative office visit specifically for obesity and blood pressure measurement
Schedule for adults (age 19+)	**Preventative schedule**
Adults with a BMI over 30 are eligible for:	♦Two additional annual preventive office visits specifically for obesity and blood pressure

	measurement ♦Two annual nutritional counseling visits specifically for obesity ♦One set of recommended laboratory studies

Preventive Medications

The plan pays for preventive care only when given by a network provider. To determine if a specific medication is covered under the wellness benefit, call express scripts at 1-800-555-3432. For over-the-counter medications purchased with a prescription from an in-network pharmacy, use your Express Scripts ID Card.

Medication	Coverage
Aspirin	♦Coverage to persons ages 45 years for men (55 years for women) through 79 years
Fluoride	♦Coverage to persons through the age of 5 years old
Folic acid	♦Coverage to females through the age of 50 years old
Iron	♦Coverage to persons less than 1 year of age
Smoking cessation	♦Coverage to persons age 18 years and older

This general summary is a reference tool for planning your family's preventive care and not a complete list of the preventive health schedule provided under your plan. Your specific needs may vary according to your personal risk factors. Your doctor is always your best resource for determining if you're at an

increased risk for a condition. To determine if a specific procedure is covered under the wellness benefit, call Highmark Blue Cross Blue Shield® at 1 866-472-0924.

MEET SOUTHERN BAPTISTS

***Your* GuideStone Financial Resources**

Started in 1918 to provide financial relief to aging ministers and their widows, GuideStone is one of the largest faith-based entities to offer financial services for church and denominational workers. Formerly known to Southern Baptists as the Annuity Board of the Southern Baptist Convention, GuideStone's mission to support aging ministers and their widows and orphans began with a $100,000 gift from the Sunday School Board (now LifeWay Christian Resources) and a nearly $1,000,000 gift from John D. Rockefeller and his son.

The stated mission of GuideStone Financial Resources is: "to assist churches, denominational entities, and other evangelical ministry organizations by making available **retirement** plan services, **life and health coverage**, **risk management** programs, and **personal and institutional investment** programs." Founded in an era when many churches and Christian organizations provided little retirement or insurance support for their staff, GuideStone provided vital services to leaders and staff of local churches and Convention ministries, giving them peace of mind to concentrate on the Great Commission as they reach out to their communities with the Gospel (Matthew 28:18-20; 2 Timothy 2:3-4).

GuideStone also supports the Great Commission by its sponsorship of the "**Widow's Might**" ministry. This ministry encourages widows to pray for Southern Baptist ministries worldwide—especially in the area of evangelism. As the GuideStone website reflects, this ministry encourages prayer for regular

ongoing ministry needs as well as specific prayer requests that are posted on a quarterly basis. Unlike many Southern Baptist entities that are supported by the Cooperative Program, GuideStone Financial Resources receives no funding from the Southern Baptist Convention Cooperative Program allocation budget. It is supported by the fees earned on its services and the growth of its investments.

In 2007, GuideStone voluntarily stopped receiving Cooperative Program funds in order to release those funds to enhance the spread of the Gospel through other SBC ministries. Prior to then, 100 percent of the Cooperative Program funds received by GuideStone was used to support its **Mission:Dignity** ministry that provides relief support for retired pastors, denominational workers, and their widows who live in financial need.

Formerly called "Adopt an Annuitant," GuideStone's **Mission:Dignity** provides assistance for approximately two thousand retired ministers, denominational workers, or their widows living on meager incomes. Many of these individuals once served small, often rural, churches which were unable to provide retirement support for them during their years of ministry. Operating largely by donations that GuideStone receives, manages, and disperses, almost $6.5 million were given to these deserving individuals in the last recorded year.

The stated mission of GuideStone Financial Resources is: "to assist churches, denominational entities, and other evangelical ministry organizations by making available retirement plan services, life

and health coverage, risk management programs, and personal and institutional investment programs.

What financial services are offered by GuideStone Financial Resources? First, GuideStone provides several **retirement** plans for churches, Christian organizations, and individuals desiring to set up and maintain a retirement plan. These include employer-sponsored plans, deferred compensation plans, and even individual retirement plans. Originally only marketed to pastors and their families, over the years these retirement plans eventually were offered to a wide array of Christian organizations and the individuals connected to them.

In addition GuideStone offers **personal investment** accounts that individuals might use for either retirement or as part of an assets management plan for producing additional income aside from retirement.

GuideStone also offers a wide variety of **insurance plans**. These include various levels of ***medical insurance***. Group medical plans are provided for any group that possesses 10 or more employees. These medical plans also include optional health savings accounts. Since insurance plays such a critical role in contemporary society, other insurance options beside medical insurance include ***dental, life, disability, property, and casualty insurance***.

Furthermore, GuideStone provides financial services geared to specific financial needs of organizations and individuals. These include executive benefit services and actuarial services.

GuideStone Funds is GuideStone's affiliate for providing Christian-based, socially screened,

registered mutual funds. It offers a variety of mutual funds available to meet the needs of its participants. GuideStone Funds operates a "manager-of-managers" investment model. Providing access to world class investment firms within a single investment fund, this approach benefits the individual investor. The firms utilized by GuideStone Funds have specific guidelines for each fund, and the funds themselves are carefully chosen based on a rigorous selection process utilizing both quantitative and qualitative measures and analysis.

A controlled affiliate of GuideStone Financial Resources, **GuideStone Capital Management**, is the investment advisor for GuideStone Funds. At the end of 2011 this affiliate managed $9.6 billion in assets. In its advisory role GuideStone Capital Management currently serves more than 800 plan sponsors and over 200,000 participants. *All investments are managed consistently with a Christian worldview orientation and each investment is screened for its compatibility with the established biblical guidelines as determined by GuideStone policy.*

In recent years GuideStone Funds has won numerous national awards for outstanding investment performance from industry ranking firms like Lipper, fi360, and Morningstar. GuideStone Funds in March became the first ever Christian-based, socially screened mutual fund family to win the prestigious Lipper trophy for Best Overall Small Fund Group in the U.S., ranking #1 out of 182 eligible companies. (Lipper classifies fund families with up to $40 billion in assets under management in its Small Fund Group.) "This is the first time that a

Socially Responsible Investing fund group has won the award," said Jeff Tjornehoj, head of Lipper Americas Research. "2011 was a challenging year for the industry; GuideStone and all our winners should be congratulated for their achievements."

To accomplish its mission GuideStone Financial Resources develops its products and services in consultation with churches, state conventions, representatives from the other national entities, and the experience and expertise of the personnel from the six Southern Baptist Theological Seminaries. GuideStone maintains a long tradition of cooperating and working alongside other Convention entities, and encourages its employees to donate time and resources to Southern Baptist ministries all around the world. The spirit of these initiatives demonstrates the long history of cooperation in Southern Baptist life. Indeed this principle of cooperation is one of the eighteen spiritual principles enshrined in *The Baptist Faith and Message.*

GuideStone Funds is GuideStone's affiliate for providing Christian-based socially screened registered mutual funds.

All investments are managed consistently with a Christian worldview orientation and each investment is screened for its compatibility with the established biblical guidelines as determined by GuideStone policy.

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PPACA Overview

Your guide to health care reform law

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Revised on August 15, 2013

The foregoing information is general in nature and is intended to keep you apprised of certain important developments. This information may be subject to interpretation or clarification over time, so we cannot guarantee its long-term accuracy or how it might be determined to apply in certain situations.

What is PPACA?

In March 2010, President Obama signed the **Patient Protection and Affordable Care Act (PPACA)** into law, ushering in sweeping changes to how Americans access and pay for health care. On June 28, 2012, the U.S. Supreme Court upheld the vast majority of the law. With President Obama's re-election in November 2012, the way has been paved for full implementation. Though many provisions have already come into effect, 2014 is the critical year for PPACA. That's when many of the most substantial changes—including health care insurance exchanges and the individual and employer mandates—are slated to arrive. This is an overview

of the provisions scheduled to take effect between 2012 and 2015.

Church health plans and PPACA

➢ What are church health plans?

Among the oldest health plans in the nation, church health plans are self-funded, multiple employer health plans operated by not-for-profit church benefits boards. They're designed specifically to meet the unique needs of those in ministry and have special standing with the IRS for this purpose. Because GuideStone's health plans exist solely to serve those in ministry, they include special benefits like:

- Increased flexibility for employers in structuring their plans to meet their ministry's unique needs
- Plan designs that adhere to shared Biblical values, particularly regarding sanctity of life
- Plan designs that you are accustomed to
- The freedom for employees to move between available plans during annual re-enrollment
- No commission benefit advisers and a not-for-profit approach to plan management
- Access to some of the largest, nationwide networks so our participants can choose best-in-class doctors, hospitals, pharmacies and other health care providers at discounted rates
- Family friendly plans that do not charge additional costs for more children and have maternity coverage

- Potential for plan cost-containment results to be returned to our participants and employers in the form of lower rates

➢ How does PPACA address church health plans?

PPACA does not directly address church plans. Therefore, in cooperation with church benefits boards throughout the country, GuideStone is working with legislators, regulatory agencies and the White House to gain legislation and regulatory relief that speaks to the unique needs of church plans. We remain committed to standing strong for those in ministry and will continue to promptly inform our employers and participants as provisions come into effect.

Provisions in place

Women's preventive health expansion

EFFECTIVE DATE:
As of the first renewal on or after August 1, 2012

EFFECTIVE DATE FOR GUIDESTONE PLANS:
January 1, 2013

PPACA requires that health plans expand the preventive health services they cover for women at no cost-sharing under the *Preventive Care Schedule.* These expanded benefits include:

- Well-woman visits
- Gestational diabetes screening
- Human Papillomavirus (HPV) DNA testing

- Sexually-transmitted infection (STI) counseling
- HIV screening and counseling
- Contraception and contraceptive counseling (Note: GuideStone does not provide coverage for abortions or abortion-causing drugs.)
- Breastfeeding support, supplies and counseling
- Interpersonal and domestic violence screening and counseling

Effective January 1, 2013, GuideStone covers all of these expanded services at 100%, in-network, per the *Preventive Care Schedule*. The only exception is that GuideStone does not provide coverage for abortions and abortion-causing drugs, as this violates our Biblical convictions on the sanctity of life.

Medical Loss Ratio rebates

EFFECTIVE DATE:
August 1, 2012

EFFECTIVE DATE FOR GUIDESTONE PLANS:
Not applicable

A "Medical Loss Ratio (MLR)" is the percentage of insurance premium dollars spent on reimbursement for clinical services or activities to improve health care quality. PPACA requires insurers to meet minimum MLR standards — 85% and 80% respectively for large group and small group/individual policy business. If a state-regulated insurer does not meet these minimums, the insurer is required to issue rebates to plan sponsors (i.e.,

employers), which they must pass along to participants.

Beginning August 1, 2012, some plan sponsors began receiving rebates from insurers who failed to meet these minimum standards. Going forward, state-regulated insurers are required to submit data to the government to determine if rebates will be paid to policyholders. These rebates will be paid every August 1.

As a self-funded plan, GuideStone's medical plans are exempt from this requirement. Self-funded plans exist solely to pay claims for a specified group and ensure adequate reserves. Because GuideStone is non-profit, GuideStone's self-funded church plans are not intended to make a profit — unlike many state-regulated insurance carriers — and are therefore exempt from the provision.

GuideStone's claims-to-premium ratio exceeds the minimum standard set by the federal government. This means that even if GuideStone were subject to this provision, we would not be required to issue rebates. As a non-profit church plan, GuideStone uses any additional funds it receives for the benefit of the plan and those participating. Those benefits are seen in reduced plan pricing and/or increased plan benefits.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

EAST TEXAS BAPTIST UNIVERSITY, and HOUSTON BAPTIST UNIVERSITY

Plaintiffs,

v.

Civil No. 12-3009

KATHLEEN SEBELIUS, *et al.*

SUPPLEMENTAL DECLARATION OF DR. ROBERT B. SLOAN

Defendants.

Supplemental Declaration of Dr. Robert B. Sloan President, Houston Baptist University

1. My name is Robert B. Sloan. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current President of Houston Baptist University ("Houston Baptist").

2. I make this declaration as a supplement to my declaration of August 30, 2013 ("First Sloan Declaration").

3. My prior declaration set forth Houston Baptist's religious beliefs concerning the God-given worth of human beings from conception to death, and its

objection to deliberately taking any action that would facilitate access to abortion-causing drugs and devices. *See* First Sloan Declaration at paras. 11-22.

4. My prior declaration also stated that "Houston Baptist's health benefits plan ('Plan') is provided through GuideStone Financial Resources of the Southern Baptist Convention ('GuideStone')," that "GuideStone is a church health plan," and that "church health plans are self-funded, multiple employer health plans operated by not-for-profit church benefits boards and given a special status by the IRS." First Sloan Declaration at paras. 25-27.

5. I understand that the government has now argued that part of its scheme for distributing abortion-causing contraceptives to Houston Baptist's employees is not working "at this time." Dkt. 103, Def's Reply at 4. In particular, I understand that the government claims that it lacks the authority "at this time" to force the third party administrator of a self-insured church health plan like the GuideStone Plan to make payments for these drugs. *Id.* However, my understanding is that the government will still require HBU to execute and submit to either GuideStone or Highmark Blue Cross/Blue Shield a prescribed self-certification form that has been submitted to the Court as Exhibit E-1.

6. I have reviewed the self-certification form and considered the government's new position. The government's new position does not change our religious objection to complying with the "accommodation" created under the final rules. 78 Fed. Reg. 39870, 39879-80 (July 2, 2013).

7 Houston Baptist's religious beliefs prohibit me, as president of Houston Baptist, from authorizing anyone to arrange for or make payments for abortion-causing contraceptives, or taking action that triggers the provision of abortifacients, or is the but-for cause of the provision of abortifacients. It makes no difference whether those payments will take place now or next year. Under Baptist religious principles, I simply cannot:

A. Sign the self-certification form that on its face authorizes another organization to deliver abortion-causing contraceptives to Houston Baptist's employees and other beneficiaries now;

B. Deliver the self-certification form to another organization that could then rely on it as an authorization to deliver these abortion-causing contraceptives to Houston Baptist's employees and beneficiaries, now or in the future;

C. Agree to refrain from speaking to that other organization and instructing or asking it not to deliver abortion-causing contraceptives to Houston Baptist's employees;

D. Create a provider-insured relationship (between our plan's beneficiaries and either GuideStone or Highmark Blue Cross/Blue Shield), the sole purpose of which would be to provide abortifacients;

E. Participate in a scheme, the sole purpose of which is to provide abortifacients to HBU plan employees or other beneficiaries.

Yet the government still requires me to do all of these things, or face massive penalties.

8. Specifically, the government still wants me to comply with its "accommodation" by filling out the self-certification form.

9. On the front of the form, Houston Baptist must certify its objection to "providing coverage for some or all of any contraceptive services." Ex. E-1 at 1.

10. On the back of the form, the government states that Houston Baptist "or its plan must provide a copy of this certification to a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement." Ex. E-1 at 2. The government has still not identified to whom Houston Baptist must give this form—to GuideStone, or to the third party administrators that GuideStone has hired to administer the GuideStone Plan. *See* First Sloan Declaration at paras. 46-50.

11. Also on the back of the form, there is a "Notice to Third Party Administrators of Self-Insured Health Plans," which states that the form "constitutes notice to the third party administrator that [t]he obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3- 16, and 29 CFR 2590.715-2713A," and that "[t]his certification is an instrument under which the plan is operated." Ex. E-1 at 2.

12. The self-certification form does not notify the third party administrators of self-insured church health plans of the government's opinion expressed in this litigation that they cannot currently be forced by the government to comply with the federal regulations cited on the form.

13. The self-certification form does not notify the third party administrators of self-insured church health plans that the certification is *not* a valid "instrument under which the plan is operated."

14. It is my understanding that the final rules prevent Houston Baptist from telling any third party administrator to disregard the instructions on the form. Specifically, the final rules state that Houston Baptist "must not, *directly or indirectly*, seek to influence the third party administrator's decision" to "provide or arrange separate payments for contraceptive services for participants or beneficiaries." 26 C.F.R. § 54.9815–2713A(b)(3) (emphasis added).

15. Thus, providing a third party administrator with this form, as the "accommodation" requires, could be construed by the third-party administrator as an authorization to provide or pay for abortion-causing contraceptives.

16. Moreover, the government has stated that it "continue[s] to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans." Dkt. 103, Def's Reply at 4.

17 Thus, providing a third party administrator with this form, as the "accommodation" requires, could be relied upon by the government as an authorization to provide or pay for abortion-causing contraceptives as soon as the government has chosen how it will extend the "accommodation's" requirements to the third party administrators of self-insured church health plans.

18. I do not understand the government's actions. If the self-certification form is not part of the scheme to deliver abortion-causing contraceptives to Houston Baptist's employees, I do not understand why the government continues to insist that Houston Baptist sign and deliver the form. Given the form's origin as part of the "accommodation's" contraceptive delivery scheme, it seems very likely to me that the government's insistence that I sign and deliver this form is based on the government's view that my doing so will aid in the delivery of abortion-causing contraceptives. My faith forbids me from participating in this scheme.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 13, 2013 /s/ Dr. Robert B. Sloan
Dr. Robert B. Sloan

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

WESTMINSTER UNIVERSITY, and HOUSTON BAPTIST UNIVERSITY
Plaintiffs,

v. No. 4:12-cv-03009

KATHLEEN SEBELIUS, *et al.*
Defendants.

Declaration of Jeffrey K. Jue, Ph.D Provost and Stephen Tong Professor of Reformed Theology, Westminster Theological Seminary

1. My name is Jeffrey K. Jue. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current Provost of Westminster Theological Seminary ("Westminster") and occupy the Stephen Tong Chair of Reformed Theology. I have served in faculty and administrative positions at Westminster since 2002. I submit this Declaration based on my personal knowledge and my familiarity with Westminster's history and legacy and faith convictions.

2. I understand that Westminster will face millions of dollars in annual fines-along with other potential penalties and lawsuits-if, based on its

religious beliefs, it refuses to offer health insurance that covers abortion-causing drugs and devices. As Provost, I know the kind of strain that this would place on this small theological seminary, and as Provost, I know that Christian faith and mission in the Reformed tradition are what animates Westminster, indeed, what constitute Westminster's reason for being.

Westminster's history and beliefs

3. Westminster is a graduate level Christian theological seminary. Its physical campus is located in Glenside, Pennsylvania. It was founded in 1929 by five former professors at Princeton Theological Seminary who left esteemed faculty positions at that venerable institution and started Westminster in order to preserve Princeton's original legacy. the legacy of what became known as "Old Princeton." Exhibit A-1, Preamble to Constitution. Westminster is not formally affiliated with any denomination, but it is dedicated to the Reformed understanding of the Christian faith that is often associated with Presbyterianism. Westminster operates in accordance with a Charter and Constitution, pertinent sections of which are attached to this Declaration as Exhibit A-1.

4. As recorded in in pertinent part in its Charter, Westminster's purpose is "to form men for the gospel ministry, who shall truly believe, and cordially love, and therefore endeavor to propagate and defend, in its genuineness, simplicity, and fullness, that system of religious belief and practice which is set forth in the Confession of Faith and Catechisms of the Orthodox Presbyterian Church and the Presbyterian

Church in America in the form they possessed in 1936 and 1973, respectively and that is integrally related to the fundamental principles of Presbyterian church government; thereby, cultivating and sustaining genuine Christian devotion with sound learning .... It is, in addition, to furnish training in Scripture and theology to men and women who are preparing to serve Christ and his church in vocations other than the gospel ministry so that the whole body of Christ may be enriched." Ex. A-1 (Charter Article II).

5. Westminster's brief mission statement is drawn from Habakkuk 2:14 to say "Westminster Theological Seminary (PA) exists to serve Christ and his kingdom by extending the knowledge of the glory of God in Christ until that knowledge covers the earth as the waters cover the sea." Ex. A-1 (Westminster's Statement of Distinctives).

6. Today, Westminster serves approximately 625 students in six graduate degree programs.

7. Reformed Christians, by virtue of their history, are acutely sensitive to coercive government actions that infringe upon religious liberty. Their heritage reaches to the early American settlers who fled England and who became known on these shores as "Puritans" and to oppressed Protestants who fled France for these shores and were known as Huguenots. The Presbyterian form of government, and its system of checks and balances, was adapted by the framers in the Constitution of this Nation.

8. John Calvin, known in Reformed circles as "The Reformer," fled France and operated mainly from Geneva where he captured and summarized in his

Institutes of the Christian Religion (and other writings) the theological underpinnings for Reformed Presbyterianism, to the point that Reformed theology is often referred to as "Calvinism." John Knox, a student of Calvin's and the founder of Presbyterianism in Scotland, was imprisoned and indentured as an oarsman on a French galley ship and later exiled to Switzerland because of his faith and his boldness for it in the face of governmental power. Westminster is decidedly Calvinistic in its religious understanding and intends to be as faithful to its tenets as were its namesake and John Knox and many other martyrs for the faith.

9. Westminster is governed by a Board of Trustees, all of whom are either teaching or ruling elders in a Presbyterian church. Indeed, being such an elder is a requirement of service on that board. Exhibit A-1, Charter Article VI.

10. Faculty members at Westminster must subscribe *ex animo* to the Westminster Standards, which includes the Westminster Confession of Faith, the Larger and Shorter Catechisms, and the Directory of Public Worship, the quintessential expression of the Reformed understanding of faith and pledge, "not to inculcate, teach or insinuate anything which shall appear to me to contradict or contravene, either directly or impliedly. any element in that system of doctrine ...." Ex. A-1 (Constitution Section V.3).

11. As prescribed in its Employment Policy Manual, "Westminster Theological Seminary hires only personnel who belong to a Christian church and subscribe to biblical orthodoxy (belief) and orthopraxy

(practice)." Ex. A-1 (Employment Policy Manual, p. 8).

12. The entire curricula in Westminster's courses of study is biblical and theological, and they support only graduate level studies. Although students at Westminster come from a variety of denominational persuasions and from diverse locations around the world, they are all oriented in their enrollment at Westminster to its Reformed heritage.

Westminster's beliefs and teachings on abortion

13. Westminster affirms that Scripture calls Christians to uphold the God-instilled sanctity of human life, grounded in His creation of every human being in His image, from conception to death. As Genesis 1 says, "God created mankind in his own image." Genesis 1:27a (NIV). And as Psalm 139 says, "For you [God] created my inmost being; you knit me together in my mother's womb. all the days ordained for me were written in your book before one of them came to be." Psalm 139:13, 16 (NIV).

14. As stated earlier, Westminster's Board and Faculty are required to subscribe to the Westminster Standards. The Westminster Larger Catechism Question and Answer 135 clearly states, "[t]he duties required in the sixth commandment are, all careful studies, and lawful endeavors, to preserve the life of ourselves and others ... " The preservation of life is a mandate according to our confessional standards. The catechism goes on further to include in this mandate "protecting and defending the innocent"; and we believe this extends to unborn children as well.

15. Westminster affirms that Scripture condemns the taking of innocent human life (Exodus 20:13 (NIV)) and commands Christians to protect the weak and vulnerable. As the Scriptures say, we are to "[d]efend the weak and the fatherless," "[r]escue the weak and the needy," and "speak up for those who cannot speak for themselves." Psalm 82:3-4b (NIV); Proverbs 31:8a (NIV).

16. Westminster believes and teaches that abortion ends a human life and is a sin. But it also believes and teaches that it is important to care for every life involved in a crisis pregnancy: the unborn, the mother, the father, and the extended family.

17. It is a violation of Westminster's teachings and religious beliefs to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services.

18. Westminster has a sincere religious objection to providing coverage for the emergency contraceptive drugs Plan B and Ella and their variants, since it believes those drugs could prevent a human embryo-which it understands to include a fertilized egg before it implants in the uterus-from implanting in the wall of the uterus, causing the embryo to die. The same objection applies to abortion-causing IUDs.

19. Westminster considers preventing implantation of a human embryo by artificial means to be an abortion.

20. Therefore it is a violation of Westminster's teachings and religious beliefs for it to deliberately

fund, sponsor, underwrite, or otherwise facilitate access to Plan B and Ella, or abortion-causing IUDs.

21. It is similarly a violation of Westminster's religious beliefs to deliberately take any action (including providing access to health insurance) that would facilitate access to abortion-causing drugs, abortion procedures, and related services, even if those items were paid for by an insurer or a third party administrator and not by Westminster.

22. Consistent with these religious beliefs, Westminster would never condone insurance coverage for abortion-causing drugs, procedures or related services in the health insurance plan it provides to its employees. Without Westminster's awareness, however, its health insurer inserted such coverage into Westminster's plan. Westminster has made every effort to cause coverage of such drugs to be removed from its current plan, but it has not convinced its insurer as yet to do so. Even with the assurances provided in this litigation that the Defendants are applying the benefits of the former so-called "safe harbor" to Westminster, Westminster's plan provider still fears possible enforcement of the mandate against it and therefore refuses to remove coverage for the offensive drugs in Westminster's plan. Westminster's insurance plan year begins on November 1. Westminster is trying to find an insurer that will honor its requirements by providing health insurance without the offensive coverages, but has so far not found a viable alternative. This difficulty poses an immediate and critical problem for Westminster. It is a genuine crisis in light of Westminster's faith convictions.

Westminster's health benefits and practices

23. As an aspect of its religious convictions, Westminster promotes the well-being and health of its employees. This includes provision of generous health services and health benefits for its employees. *See generally* Ex. A-1 (Employment Policy Manual, p. 32-33).

24. Westminster has about 60 full-time employees and 65 part-time employees. All of these employees profess a commitment to "to biblical orthodoxy (belief) and orthopraxy (practice)." Ex. A-1 (Employment Policy Manual, p. 8).

25. Westminster's health plan provider is Independent Blue Cross of Pennsylvania ("IBX"). IBX provides that coverage to a consortium of schools that includes Westminster. The coverage for Westminster's employees is distinct from that for the other members in the consortium, but the coverages are priced and placed in connection with each other.

26. Westminster has contracted with Armstrong, Doyle & Carroll, Inc. to act as its consultant for its employee health insurance plan.

27 I have been informed that Westminster's employee health plan does not meet the definition of a "grandfathered" plan under 42 U.S.C. § 18011 and 75 Fed. Reg. 41,726, 41,731 (2010).

28. Westminster wishes to continue to provide high-quality, affordable health benefits for its employees. Doing so is consistent with Westminster's religious commitment to support its faculty, staff, and their families.

29. If Westminster were to terminate health insurance coverage for its employees and stop offering health benefits, it would create a serious hardship for most faculty and staff. Westminster would also suffer serious competitive disadvantages in recruiting and retaining faculty and staff. If that happened, Westminster would also suffer impairment to the quality of its programs and instruction and, therefore, its overall effectiveness of service to the Lord.

The final form of the Mandate and Westminster's choice

30. The regulations imposing the requirement that Westminster provide access to abortion-causing drugs, including Plan B, Ella, and abortion-causing IUDs (the "Mandate") violate Westminster's religious beliefs. The Mandate also forces Westminster to provide access to education and counseling concerning abortion that directly conflicts with Westminster's religious beliefs and teachings. Providing these drugs, counseling, and education is incompatible and irreconcilable with Westminster's religious beliefs, express messages, and speech.

31. I am aware of the Mandate's exemption provision for religious employers. Westminster cannot qualify for this exemption. Westminster is not a nonprofit organization as described in section 6033(a)(l) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended. Specifically, it is not a church, an integrated auxiliary of a church, a convention or association of churches, or a religious order.

32. Because it does not qualify for an exemption to the Mandate, Westminster sincerely hoped the U.S. Department of Health and Human Services ("HHS") would decide to broaden the exemption to cover religious institutions like Westminster.

33. On July 2, 2013, HHS published its final amendments to the Mandate. 78 Fed. Reg. 39.870 ("Final Rule"). Despite over 400,000 comments urging it to do so, HHS did not abolish the distinction between churches and religious institutions like Westminster. Instead, HHS adopted an "accommodation" that requires Westminster to play a central role in facilitating access to abortion-causing drugs and devices by either paying for such coverage directly or by self-certifying and notifying our insurance provider in such a way as to trigger such coverage for its employees.

The effects of the "accommodation" on Westminster

34. An organization is eligible for the accommodation if it (1) "opposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." 78 Fed. Reg. at 39874. I understand that Westminster is an "eligible organization."

35. Thus, Westminster would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014, and notify its insurer that it had so self-certified. 78 Fed. Reg. at 39879. Notification of the self-certification would trigger an obligation on the part of insurance

provider to provide Westminster employees with payment coverage for abortion-causing drugs and devices. Westminster would be taking action that, under the Mandate, would force its insurer to provide coverage for the offensive drugs to Westminster's employees.

36. As a condition of complying with the "accommodation," Westminster would also have to refrain from "[d]irectly or indirectly interfering with a third party administrator's efforts to provide or arrange separate payments for contraceptive services for participants or beneficiaries in the plan" or "directly or indirectly seeking to influence a third party administrator's decision to provide or arrange such payments." 78 Fed. Reg. at 39879-80. The Mandate assumes that once it receives notice of the self-certification, the plan provider will be willing to make "separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. at 39880.

37. However, I understand that HHS has acknowledged that "there is no legal obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities." 78 Fed. Reg. at 39880.

38. At this time, I do not know whether Westminster will be able to find a plan provider who will be willing to carry out the obligations of the Mandate under those circumstances.

39. Thus, the burden remains on Westminster to find an insurance provider that will agree to providing free access to the same abortifacient drugs and services that Westminster cannot, consistently

with its faith convictions, directly provide. However, even if it could, Westminster cannot in good conscience and consistently with its faith convictions, even take the self-certifying action that it knows will result in providing health coverage for the abortifacient drugs to its employees.

40. Westminster's religious beliefs preclude it from soliciting, contracting with, or designating an insurer or third party to provide these drugs and services. From Westminster's perspective, forcing an insurer or third party administrator to provide free access to abortifacient drugs and services is no different from paying for that access directly Westminster cannot ignore its conscience and its obligation to the God it serves by the sleight of hand, self-certification and notice expedient proffered in the Mandate.

41. Moreover, it is my understanding that the Mandate requires that when a third party administrator is involved, even if the third party administrator consents, the religious organization-via its self-certification-must expressly designate the third party administrator as "an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries." 78 Fed. Reg. at 39879.

42. Under the so-called "accommodation," Westminster would have to identify its employees to the insurer or third party administrator for the distinct purpose of assisting the government's scheme to provide free access to contraceptive and abortifacient services to Westminster's employees, and Westminster would have to continue to

coordinate with its insurer or third party administrator whenever it added or removed employees and beneficiaries from its healthcare plan and, as a result, add them to or remove them from the contraceptive and abortifacient services payment (or payment-avoidance) scheme.

43. Thus, even under the so-called "accommodation," Westminster and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to contraceptive and abortifacient services.

44. I understand that the Mandate sets forth complex means through which a third party administrator may seek to recover its costs incurred in making payments for contraceptive and abortifacient services, but I also understand that there is no way to ensure that the cost of administering the abortifacient services would not be passed down to Westminster through increased fees.

The Mandate's impact on Westminster

45. Westminster will be subject to enforcement under the Mandate—enforcement that includes fines, other regulatory penalties, and potential lawsuits—starting on January 1, 2015. However, because Westminster's current insurer does not recognize that it is protected from governmental enforcement against it, Westminster's effective deadline for finding insurance coverage consistent with its faith convictions is the beginning of its next plan year, November 1, 2013. The only way Westminster can avoid the harsh consequences threatened by the Mandate would be to publicly abandon its faith commitments and violate its religious convictions.

This is no choice at all, because Westminster's faith is central to its identity, its mission, and its very existence.

46. If Westminster chooses to violate the law—by ceasing to offer employee health insurance altogether, or by, if it can procure such coverage, offering insurance that excludes the offensive drugs—then it will be penalized with fines of $2000 per full-time employee per year, or roughly $120,000 per year, every year. That amount would be a devastating blow to Westminster. For example, Westminster already often operates at a financial deficit.

47. Although the government has recently announced that it will postpone implementing the annual fine of $2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015.

48. In addition to the $2000 per-employee penalty, Westminster could also face tax penalties of $100 per day "for each individual to whom such failure relates" 26 U.S.C. § 4980D(b)(1), for offering insurance that fails to comply with the ACA, which would come to $2,190,000 per year for our 60 full-time employees alone.

49. A $2 million fine would be devastating for nearly any educational institution, but it is particularly devastating for a small Christian seminary like Westminster.

50. I also understand that Westminster could also face regulatory action and lawsuits under ERISA.

51. The Mandate imposes a burden on Westminster's employee recruitment and retention efforts by creating uncertainty as to whether

Westminster will be able to offer health benefits beyond 2013.

52. The Mandate places Westminster at a competitive disadvantage in its efforts to recruit and retain employees.

53. The Mandate forces Westminster to choose between, on the one hand, violating its religious beliefs, and, on the other hand, incurring substantial fines and terminating its employee health benefits.

54. Westminster wants to continue to provide high-quality health benefits for its employees. It has no objections to providing almost all of the mandated services, including gestational diabetes screenings, well-woman visits, and most prescription contraceptives. It asks only that it be permitted to follow its beliefs by continuing to refuse to pay for, or provide access to, abortifacients.

55. Westminster does not have a real choice in this matter. Its religious beliefs are deep, longstanding, and sincere.

The need for immediate action

56. The plan year for Westminster's health benefits begins on November 1, 2013. Westminster is already out of time to plan reasonably for that insurance plan year.

57 Every fall, Westminster works with its consultant to set the terms of its health insurance plan for the upcoming year. The process is time consuming: Westminster's staff must negotiate and work with its consultant/administrator on plan changes and on the production and distribution of

plan materials and employee health benefit cards. This process typically takes several months.

58. Westminster has already begun its search for an acceptable insurance plan to begin November 1, 2013, but has so far encountered only obstacles because of the Mandate. Westminster needs to implement major changes before November 1, 2013, the first date of the two-week open enrollment period for employees and their families. Delay could lead to a lapse in coverage. Denial of immediate relief will force Westminster to choose between violating the Mandate or its core faith convictions.

59. Westminster needs immediate relief from the Mandate in order to arrange for and continue providing employee health insurance coverage.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Glenside, Pennsylvania on September 4, 2013.

/s/ Jeffrey K. Jue, Ph.D
Jeffrey K. Jue, Ph.D

Exhibit A-1
Charter Excerpts

CHARTER (Amended 12/3/08)

On March 31, 1930, a Charter was granted to Westminster Theological Seminary under an Act of Assembly of the Commonwealth of Pennsylvania approved April 29, 1874. This charter has been amended in certain sections by subsequent actions of the courts of the Commonwealth. The body of its text, as amended, now reads as follows:

I. The name or title by which said Corporation shall be known is WESTMINSTER THEOLOGICAL SEMINARY.

II. The said Corporation is formed for the purpose of establishing and maintaining a Theological Seminary of high educational efficiency and one at all times fitted for continuing, defending and teaching the theological standards and attaining the ends hereinafter expressed, which are substantially the same as those set forth in the Introduction to the Plan of the Theological Seminary of the Presbyterian Church in the United States of America (commonly known as Princeton Theological Seminary), which was adopted by the General Assembly of the Presbyterian Church in the United States of America in 1811.

Westminster Theological Seminary is to form men for the gospel ministry, who shall truly believe, and cordially love, and therefore endeavor to propagate and defend, in its genuineness, simplicity, and fullness, that system of religious belief and practice which is set forth in the Confession of Faith and

Catechisms of the Orthodox Presbyterian Church and the Presbyterian Church in America in the form they possessed in 1936 and 1973, respectively and that is integrally related to the fundamental principles of Presbyterian church government; thereby, cultivating and sustaining genuine Christian devotion with sound learning. (Amended 12/08)

It is to provide men who are capable and competent in interpreting and applying the Word of God, who will be humble, zealous, and faithful pastors devoted to the upbuilding and strengthening of the Church of Jesus Christ.

It is to provide for the church, primarily the Presbyterian and Reformed churches that share the Seminary's commitments and heritage, ministers and others who understand contemporary culture and are able intelligently and faithfully to defend and proclaim the Christian faith and to oppose heresy and unbelief.

It is to support and advance the labors of those engaged in the ministry of the Gospel by offering the means for continuing theological education.

It is, in addition, to furnish training in Scripture and theology to men and women who are preparing to serve Christ and his church in vocations other than the gospel ministry so that the whole body of Christ may be enriched.

It is to promote harmony and unity among all of those who, by their words and their deeds, demonstrate that they believe and love and live by the teachings of God's Word.

It is to provide for the church leadership that is theologically and intellectually excellent with talents related to vocation.

It is to serve as a center of training and study for the ministry to the non-Christian world, that the mission of the church may be advanced through the provision of theological education to present and future leaders in the worldwide mission of the church.

Also, it is to prescribe courses of study; to employ all necessary professors, teachers, assistants, and officers; to acquire, receive, hold, employ and deal with such property, real or personal, as may be lawful and necessary to carry on the work of the corporation; to publish and dispose of such pamphlets, literature, or books, as may be required in the conduct of such work; to grant such certificates and diplomas as are usually granted by like institutions; to grant the degrees: Master of Divinity (M.Div.), Master of Theology (Th.M.) and Doctor of Philosophy (Ph.D.), and such other degrees as may from time to time be approved by the State Council of Education or its successors, and to perform such other functions as are usually or properly connected with the work of educational institutions of similar character.

Section VI (excerpt):

VI. The governance of said Corporation shall be vested in a Board of Trustees, consisting of at least fifteen but not more than thirty men, of whom at least one-half but not more than three fifths shall be ministers of the Gospel. Ultimately the Seminary serves the church, specifically the Presbyterian and Reformed Churches that share in the Seminary's commitment and heritage. In recognition (1) of this

subservience and (2) of the wisdom committed to the widespread and diverse body of Christ, the Board determines that all newly elected Board members (as of May 1986) shall have been previously recognized by a church of this tradition by election and ordination to the office of (teaching or ruling) elder, and shall have the appropriate qualifications for that office as those qualifications are outlined in I Timothy 2 and 3 and in Titus 1.

Constitution Excerpts

Preamble

Being convinced that it is highly important to the cause of true religion and the advancement of the Kingdom of our Lord and Savior Jesus Christ that candidates for the ministry of the Gospel be trained in accordance with the Westminster Standards as containing the system of doctrine taught in the Holy Scriptures, we have established in the city of Philadelphia an institution to be known as Westminster Theological Seminary (Pennsylvania}, to carry on and perpetuate the policies and traditions of Princeton Theological Seminary, as it existed prior to the reorganization thereof in the year 1929, in respect to scholarship and militant defense of the Reformed Faith.

Section V .3:

Section 3. The voting members of the Faculty, before assuming office, shall subscribe to the following pledge:

"I do solemnly declare, in the presence of God, and of the Trustees and Faculty of this Seminary, that (1) I believe the Scriptures of the Old and New Testaments to be the Word of God, the only infallible

rule of faith and practice; and (2) I do solemnly and ex animo adopt, receive, and subscribe to the Westminster Confession of Faith and Catechisms in the form in which they were adopted by this Seminary in the year of our Lord 1936, as the confession of my faith or as a summary and just exhibition of that system of doctrine and religious belief, which is contained in Holy Scripture, and therein revealed by God to man for his salvation; and I do solemnly ex animo, profess to receive the fundamental principles of the Presbyterian form of church government, as agreeable to the inspired oracles. And I do solemnly promise and engage not to inculcate, teach or insinuate anything which shall appear to me to contradict or contravene, either directly or impliedly, any element in that system of doctrine, nor to oppose any of the fundamental principles of that form of church government, while continue a member of the Faculty in this Seminary.

"I do further solemnly declare that, being convinced of my sin and misery and of my inability to rescue myself from my lost condition, not only have I assented to the truth of the promises of the Gospel, but also I have received and rest upon Christ and His righteousness for pardon of my sin and for my acceptance as righteous in the sight of God."

Employment Policy Manual

Page 8 (excerpt):

Westminster Theological Seminary hires only personnel who belong to a Christian church and subscribe to biblical orthodoxy (belief) and orthopraxy (practice).

Pages 32-33 (excerpt):

Medical, Vision and Dental Insurance Westminster Theological Seminary provides health insurance to fulltime employees and their dependents with access to medical, prescription, vision and dental care insurance benefits. Employees are eligible to participate in medical, vision and dental insurance plans with the first day of employment.

Employees may participate in medical, vision and dental insurance plans subject to all terms and conditions of the agreement between the seminary and the medical, vision and dental insurance companies. Employees have a 30-day period from the date of hire or the date of a qualifying event to enroll or change coverage. Human Resources must be notified when new dependents are added or when an employee's name or address changes within 30 days of the change.

The seminary pays the majority percentage of the premium for medical, vision, and dental insurance for the employee, spouse, and dependent children, if applicable. Employees contribute to the rest of the insurance premium through salary reductions.

Occasionally an employee may wish to waive medical and vision insurance coverage. All waivers are voluntary. They are not to be considered a condition of employment or used in negotiating employment offers. For those employees who have waived insurance coverage, reimbursements, up to the cost of what the seminary would pay to cover the employee and dependents, may be available to the spouse of an employee for his or her contribution toward dependent coverage.

In the event that an employee wishes to resume participation in the seminary's benefit plans, he or she should contact Human Resources. In general, resumed participation will not become effective until the next open enrollment period.

A change in employment classification that would result in loss of eligibility to participate in the health insurance plan may qualify an employee for benefits continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Westminster Seminary Distinctives (excerpt)

Westminster Theological Seminary (PA) exists to serve Christ and his kingdom by extending the knowledge of the glory of God in Christ until that knowledge covers the earth as the waters cover the sea.

No. 15-105

U.S. DISTRICT COURT
DISTRICT OF COLORADO (DENVER)
CIVIL DOCKET FOR CASE #: 1:13-cv-02611-WJM-BNB

Little Sisters of the Poor Home for the Aged, Denver, Colorado et al v. Kathleen Sebelius et al
Assigned to: Judge William J. Martinez
Referred to: Magistrate Judge Boyd N. Boland
Case in other court: USCA, 13–01540
Cause: 42:2000bb Religious Freedom Restoration Act.

Date Filed: 09/24/2013
Date Terminated: 01/30/2014
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

* * *

09/24/2013	1	COMPLAINT against Jacob J. Lew, Kathleen Sebelius, Thomas E. Perez, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury (Filing fee $400, Receipt Number 1082-3547495), filed by Christian Brothers Services, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Employee Benefit Trust, Little Sisters of the Poor Home for the Aged, Denver, Colorado. (Attachments: # 1 Civil Cover

Sheet, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Summons Kathleen Sebelius, Secretary of the United States Department of Health and Human Services, # 11 Summons United States Department of Health and Human Services, # 12 Summons Thomas E. Perez, Secretary of the United States Department of Labor, # 13 Summons United States Department of Labor, # 14 Summons Jacob J. Lew, Secretary of the United States Department of the Treasury, # 15 Summons United States Department of the Treasury, # 16 Summons Civil Process Clerk, US Attorney's Office for the District of Colorado, # 17 Summons Eric Holder, United States Attorney General) (Scherz, Carl) (Entered: 09/24/2013)

* * *

10/24/2013 15 MOTION for Preliminary Injunction by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore,

Inc.. (Attachments: # 1 Exhibit I_Mother Loraine Decl., # 2 Exhibit J_Brother Quirk Decl., # 3 Exhibit K_O Centro Injunction, # 4 Exhibit L_USCCB Directives)(Blomberg, Daniel) (Entered: 10/24/2013)

* * *

10/29/2013 19 MOTION to Certify Class *and Memdorandum in Support* by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Attachments: # 1 Exhibit M, # 2 Exhibit N, # 3 Exhibit O, # 4 Exhibit P)(Roberts, Seth) (Entered: 10/29/2013)

* * *

11/08/2013 29 BRIEF in Opposition to 15 MOTION for Preliminary Injunction filed by Defendants Jacob J. Lew, Kathleen Sebelius, Thomas E. Perez, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Bennett, Michelle) (Entered: 11/08/2013)

11/08/2013 30 MOTION to Dismiss , MOTION for Summary Judgment by

		Defendants Jacob J. Lew, Kathleen Sebelius, Thomas E. Perez, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Bennett, Michelle) (Entered: 11/08/2013)
11/08/2013	31	MOTION to File Amicus Brief by Amicus American Civil Liberties Union. (Amiri, Brigitte) (Entered: 11/08/2013)
11/12/2013	32	ORDER: This matter is before the Court on 31 the American Civil Liberties Union and American Civil Liberties Union of Colorado's Motion to Participate as *Amici Curiae* and Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction 15 and in Support of Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment 30. The Motion to Participate as *Amici Curiae* is GRANTED. *Amici's* Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction and in Support of Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment is ACCEPTED as filed. SO ORDERED by Judge William J. Martinez on 11/12/2013. Text Only Entry(wjmsec,) (Entered:

11/12/2013)

* * *

11/15/2013 37 REPLY IN SUPPORT of 15 Motion for Preliminary Injunction by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Attachments: # 1 Exhibit M Mother Loraine Supplemental Declaration, # 2 Exhibit N Brother Quirk Supplemental Declaration, # 3 Exhibit O Self-Certification Form)(Rienzi, Mark) (Modified on 11/18/2013 edited the title of the text to reflect the title of the document filed) (ervsl,). (Entered: 11/15/2013)

* * *

11/22/2013 40 Unopposed MOTION for Leave to file Supplemental Authority in Support of 15 Motion for Preliminary Injunction by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc. (Attachments: # 1 Exhibit Zubik v. Sebelius)(Rienzi, Mark) (Modified on 11/25/2013 edited the

		title of the text to reflect that this is a motion) (ervsl,). (Entered: 11/22/2013)
11/22/2013	41	OBJECTIONS to 30 MOTION to Dismiss MOTION for Summary Judgment *PLAINTIFFS' RULE 56(d) MOTION* by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Attachments: # 1 Exhibit 1 – Declaration of Mark Rienzi, # 2 Exhibit Exh. A to Declaration of Mark Rienzi, # 3 Exhibit Exh. B to Declaration of Mark Rienzi, # 4 Exhibit Exh. C to Declaration of Mark Rienzi, # 5 Exhibit Exh. D to Declaration of Mark Rienzi, # 6 Exhibit 2 – Second Supplemental Declaration of Brother Michael Quirk, # 7 Exhibit Exh. A to Second Supplemental Declaration of Brother Michael Quirk) (Scherz, Carl) (Entered: 11/22/2013)
11/22/2013	42	BRIEF in Opposition to 30 MOTION to Dismiss MOTION for Summary Judgment filed by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services,

		Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Attachments: # 1 Affidavit Rienzi Authentication Decl., # 2 Exhibit P Robertson &Collins Survey, # 3 Exhibit Q_Cohen Deposition Excerpt, # 4 Exhibit R Brother Quirk MSJ Suppl. Decl.)(Blomberg, Daniel) (Entered: 11/22/2013)
11/25/2013	43	ORDER granting 40 Plaintiffs' Unopposed Motion for Leave to File Supplemental Authority in Support of their Motion for Preliminary Injunction. The Plaintiffs' Motion is GRANTED for good cause shown. The Court will consider the referenced supplemental authority [40-1] when it rules on Plaintiffs' Motion for Preliminary Injunction. SO ORDERED by Judge William J. Martinez on 11/25/2013. Text Only Entry(wjmsec,) (Entered: 11/25/2013)
11/27/2013	44	REPLY to Response to 30 MOTION to Dismiss MOTION for Summary Judgment filed by Defendants Jacob J. Lew, Kathleen Sebelius, Thomas E. Perez, United States Department of Health and Human Services, United States Department of

		Labor, United States Department of the Treasury. (Bennett, Michelle) (Entered: 11/27/2013)
12/06/2013	45	RESPONSE to 41 Objections,,, *Defendants' Opposition to Plaintiffs' Rule 56(d) Motion* by Defendants Jacob J. Lew, Kathleen Sebelius, Thomas E. Perez, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Bennett, Michelle) (Entered: 12/06/2013)
12/17/2013	46	MOTION for Leave to *File Supplemental Authority In Support of* 15 MOTION for Preliminary Injunction by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Attachments: # 1 Exhibit)(Rienzi, Mark) (Entered: 12/17/2013)
12/18/2013	47	ORDER granting 46 Plaintiffs' Motion for Leave to File Supplemental Authority in Support of their Motion for Preliminary Injunction. The Plaintiffs' Motion is GRANTED for good cause shown. The Court

		will consider the referenced supplemental authority [46-1] when it rules on Plaintiffs' Motion for Preliminary Injunction. SO ORDERED by Judge William J. Martinez on 12/18/2013. Text Only Entry (wjmsec,) (Entered: 12/18/2013)
12/18/2013	48	MOTION for Leave to *File Supplemental Authority In Support of* 15 MOTION for Preliminary Injunction by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Attachments: # 1 Exhibit) (Rienzi, Mark) (Entered: 12/18/2013)
12/18/2013	49	ORDER: This matter is before the Court *sua sponte*. The Court is aware that Plaintiff's counsel is challenging the ACA's exemption for "eligible organizations" in courts across the country, as evidenced by the repeated submission of supplemental authority [40-1] [46-1]. The Court has reviewed the supplemental authority received thus far and will consider it in ruling on the pending motions. However, the

		Court finds that additional supplemental authority is not necessary and will no longer be accepted. The parties are advised that the Court will issue a ruling on the pending motions shortly. SO ORDERED by Judge William J. Martinez on 12/18/2013. Text Only Entry (wjmlcl,) (Entered: 12/18/2013)
12/18/2013	50	ORDER denying Plaintiffs' 48 Motion for Leave to File Supplemental Authority. Plaintiffs' Motion is DENIED based on this Court's Order of today which states that "additional supplemental authority is not necessary and will no longer be accepted." (ECF No. 49). SO ORDERED by Judge William J. Martinez on 12/18/2013. Text Only Entry (wjmsec,) (Entered: 12/18/2013)

12/20/2013	51	REPLY to Response to 30 MOTION to Dismiss MOTION for Summary Judgment — *PLAINTIFFS' REPLY IN SUPPORT OF RULE 56(D) MOTION (DKT 41)* filed by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Attachments: # 1 Exhibit 1)(Scherz, Carl) (Entered: 12/20/2013)
12/27/2013	52	ORDER Plaintiffs Motion for Preliminary Injunction ECF No. 15 is DENIED; Defendants Motion to Dismiss, or in the alternative, for Summary Judgment ECF No. 30 is DENIED to the extent it seeks dismissal of this case for lack of standing. The Court RESERVES RULING on the remainder of the issues raised in the Motion to Dismiss, by Judge William J. Martinez on 12/27/2013.(ervsl,) (Entered: 12/27/2013)
12/27/2013	53	NOTICE OF APPEAL as to 52 Order on Motion to Dismiss,, Order on Motion for Preliminary Injunction, by Plaintiffs Christian Brothers Employee Benefit Trust,

		Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc. (Filing fee $505, Receipt Number 1082-3675045) (Blomberg, Daniel) (Entered: 12/27/2013)
		* * *
12/28/2013	54	MOTION for Preliminary Injunction *Pending Appeal* by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Roberts, Seth) (Modified on 1/7/20 14 Motion re-instated pursuant to the Request from the Magistrate Judge chambers)(ervsl,). (Entered: 12/28/2013)
12/28/2013	57	ORDER of USCA as to 53 Notice of Appeal, filed by Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Employee Benefit Trust. Appellees shall file a response to the motion no later than 12:00 P.M. (noon) MST on Monday, December 30, 2013. (USCA Case No. 13-1540) (dbrow,)

		(Entered: 12/30/2013)
12/21/2013	58	BRIEF in Opposition to 54 MOTION for Preliminary Injunction *Pending Appeal* filed by Defendants Jacob J. Lew, Kathleen Sebelius, Thomas E. Perez, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Bennett, Michelle) (Entered: 12/31/2013)
12/21/2013	59	Unopposed MOTION for Leave to *File Supplemental Authority re:* 58 Brief in Opposition to Motion, by Defendants Jacob J. Lew, Kathleen Sebelius, Thomas E. Perez, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Attachments: # 1 Little Sisters of the Poor v. Sebelius (10th Cir.))(Bennett, Michelle) (Entered: 12/31/2013)

12/31/2013	60	ORDER granting 59 Defendants' Unopposed Motion for Leave to File Supplemental Authority in Opposition to Plaintiffs' Motion for Injunction Pending Appeal 54. The Defendants' Motion is GRANTED for good cause shown. The Court will consider the referenced supplemental authority [59-1] when it rules on Plaintiffs' Motion for Preliminary Injunction Pending Appeal. SO ORDERED by Judge William J. Martinez on 12/31/2013. Text Only Entry (wjmsec,) (Entered: accepted."(ECF No. 49). SO ORDERED by Judge William J. Martinez on 12/18/2013. Text Only Entry (wjmsec,) (Entered: 12/18/2013)
12/31/2013	61	USCA ORDER denying Appellate Emergency Motion for Preliminary Injunction filed in the Appellate Court pending appeal on 12/31/13.(dbrow,) (Modified on 1/7/2014 Edited the text to reflect the Motion was filed in the Appellate Court) (ervsl,). (Entered: 01/02/2014)

* * *

01/14/2014	66	REPLY to Response to 54 MOTION for Preliminary Injunction *Pending Appeal PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR INJUNCTION PENDING APPEAL* filed by Plaintiffs Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc.. (Scherz, Carl) (Entered: 01/14/2014)
01/29/2014	67	Letter (Order) from Supreme Court of the United States re 54 MOTION for Preliminary Injunction Pending Appeal. (evana,) (Entered: 01/29/2014)
01/30/2014	68	ORDER: This matter is before the Court on 54 Plaintiffs' Motion for Injunction Pending Appeal. The United States Supreme Court has ordered that Defendants are enjoined from enforcing the Mandate if Plaintiffs submit a written statement indicating that they hold themselves out as religious organizations and have religious objections to providing coverage for contraceptive services. The Supreme Court's Order explicitly states that Plaintiffs will not be required to

use the form prescribed by the Government, and are not required to submit their written notice to any third party. Because the Supreme Court has effectively granted Plaintiffs the injunctive relief they seek in the instant Motion, the Court DENIES the Motion for Injunction Pending Appeal AS MOOT SO ORDERED by Judge William J. Martinez on 1/30/2014. Text Only Entry (wjmlcl,) (Entered: 01/30/2014)

01/30/2014 69 ORDER: This matter is before the Court on 53 Notice of Appeal. Plaintiffs have appealed to the United States Court of Appeals for the Tenth Circuit this Court's denial of Plaintiffs' Motion for Preliminary Injunction. Pursuant to D.C.COLO.LCivR 41.2., the Court ORDERS that the above-captioned case be ADMINISTRATIVELY CLOSED. The parties may seek leave to reopen this case, for good cause shown, once the pending appeal has been resolved. SO ORDERED by Judge William J. Martinez on 1/30/2014. Text Only Entry (wjmlcl,) (Entered: 01/30/2014)

* * *

03/31/2014 71 ORDER of USCA as to 53 Notice of Appeal, filed by Christian

Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Employee Benefit Trust. ORDER denying the government's motion to consolidate appeals. Appeal numbers 14-6026 and 14-6028 will brief separately and will have separate appendices. The separate briefing will apply to the opening briefs, the response brief, and the optional reply brief Likewise, the appeals will not be joined for a single oral argument hearing. The Court will decide at a later date whether the same panel of judges will hear the matters, and will also determine how and when oral argument will proceed. Those issues remain for consideration. (USCA Case No. 13-1540) (dbrow,) (Entered: 04/01/2014)

* * *

07/14/2015 73 USCA Opinion as to 53 Notice of Appeal, filed by Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Employee Benefit Trust : Affirmed and Reversed (USCA Case No. 13-

		1540) (This document is not the Mandate) (cthom,) (Entered: 07/14/2015)
07/14/2015	74	USCA Judgment as to 53 Notice of Appeal, filed by Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Employee Benefit Trust: (USCA Case No. 13-1540) (This document is not the Mandate) (cthom,) (Entered: 07/14/2015)
07/24/2015	75	Letter from U.S. Supreme Court regarding Petition for Writ of Certiorari re 53 Notice of Appeal,; assigned Supreme Court No. 15-105 (Appeal No. 13-1540) (cthom,) (Entered: 07/24/2015)
11/10/2015	76	Letter from U.S. Supreme Court regarding Petition for Writ of Certiorari re 53 Notice of Appeal, ; assigned Supreme Court No. 15-105 (Appeal No. 13-1540) (cthom,) (Entered: 11/10/2015)

U.S. District Court
Western District of Oklahoma [LIVE (Oklahoma City)
CIVIL DOCKET FOR CASE #: 5:13-cv-01092-D

Reaching Souls International Inc et al v. Sebelius et al	Date Filed: 10/11/2013
Assigned to: Honorable Timothy D. DeGiusti	Date Terminated: 03/26/2014
Case in other court: Tenth Circuit, 14—06028	Jury Demand: Plaintiff
Cause: 42:2000 Job Discrimination (Public Accomodations)	Nature of Suit: 440 Civil Rights: Other
	Jurisdiction: U.S. Government Defendant

* * *

10/11/2013	1	COMPLAINT against Health and Human Services, Department of, Labor, Department of, Jacob J Lew, Thomas E Perez, Kathleen Sebelius, Treasury, Department of filed by Reaching Souls International Inc, Truett-McConnell College Inc, Guidestone Financial Resources of the Southern Baptist Convention. (Attachments: # 1 Exhibit 1 – Women's Preventive Svcs Guidelines, # 2 Exhibit 2 – Birth Control Medicines to Help You, # 3 Exhibit 3 – News Release re HHS, # 4 Exhibit 4 – The Affordable Care Act, # 5 Exhibit 5 – CMS.gov, # 6

Exhibit 6 – Employment Measures, # 7 Civil Cover Sheet)(ap) (Entered: 10/15/2013)

* * *

10/25/2013 7 MOTION for Preliminary Injunction , *Request for Expedited Consideration, and Brief in Support* by All Plaintiffs. (Attachments: # 1 Exhibit 1 – Declaration of Timothy E. Head, # 2 Exhibit 2 – Declaration of Joshua Wells, # 3 Exhibit 3 – Declaration of David Armstrong, # 4 Exhibit 4 – Preliminary Injunction filed USDC-District of New Mexico 11-13-2002)(Giddens, Jared) (Entered: 10/25/2013)

10/25/2013 8 MOTION to Certify Class, *Request for Expedited Consideration and Brief in Support* by All Plaintiffs. (Attachments: # 1 Exhibit 1 – Declaration of Timothy E. Head, # 2 Exhibit 2 – Declaration of Joshua Wells, # 3 Exhibit 3 – Declaration of David Armstrong, # 4 Exhibit 4 – Declaration of Carl C. Scherz, # 5 Exhibit 5 – Declaration of Mark Rienzi)(Giddens, Jared) (Entered: 10/25/2013)

* * *

11/15/2013 50 RESPONSE in Opposition re 7 MOTION for Preliminary Injunction, *Request for Expedited Consideration, and Brief in Support* filed by All Defendants. (Berwick, Benjamin) (Entered: 11/15/2013)

11/15/2013 51 MOTION to Dismiss, MOTION to Dismiss for Lack of Jurisdiction *or in the Alternative*, MOTION for Summary Judgment *and Memorandum in Support* by All Defendants. (Berwick, Benjamin) (Entered: 11/15/2013)

* * *

11/27/2013 56 REPLY by Plaintiffs Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International Inc, Truett-McConnell College Inc re 51 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction *or, in the Alternative* MOTION for Summary Judgment *and Memorandum in Support*, 7 MOTION for Preliminary Injunction, *Request for Expedited Consideration, and Brief in Support* filed by All Plaintiffs. (Attachments: # 1 Exhibit 1 – Declaration of Joseph Ormont, # 2 Exhibit 2 – Declaration of Mark Rienzi, # 3 Exhibit 3 – Supplemental

Declaration of Timothy E. Head, # 4 Exhibit 4 – Declaration of Joshua Wells, # 5 Exhibit 5 – Declaration of David Armstrong)(Giddens, Jared) (Entered: 11/27/2013)

* * *

12/06/2013 59 REPLY to Response to Motion re 51 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction *or, in the Alternative* MOTION for Summary Judgment *and Memorandum in Support* filed by All Defendants. (Berwick, Benjamin) (Entered: 12/06/2013)

* * *

12/17/2013 63 UNOPPOSED MOTION for Leave *to File Supplemental Authority* by All Plaintiffs. (Attachments: # 1 Exhibit)(Rienzi, Mark) (Entered: 12/17/2013)

12/18/2013 64 ORDER granting 63 Motion for Leave to File Supplemental Authority. Signed by Honorable Timothy D. DeGiusti on 12/18/2013. (mb) (Entered: 12/18/2013)

* * *

12/20/2013 67 ORDER denying 51 Motion to Dismiss for Lack of Jurisdiction; granting 7 Motion for Preliminary Injunction. Injunction Issued.

		Signed by Honorable Timothy D. DeGiusti on 12/20/2013. (mb) (Entered: 12/20/2013)
		* * *
12/23/2013	69	ORDER denying 8 Motion to Certify Class. Signed by Honorable Timothy D. DeGiusti on 12/23/2013. (mb) (Entered: 12/23/2013)
02/11/2014	71	NOTICE OF INTERLOCUTORY APPEAL by All Defendants. (Berwick, Benjamin) (Entered: 02/11/2014)
		* * *
03/10/2014	77	ORDER denying 51 Motion to Dismiss; denying 51 Motion for Summary Judgment; denying 54 Plaintiffs' Rule 56(d) Motion. Each party shall inform the Court by written notice filed within 14 days of its position regarding a stay of the action pending appeal. Signed by Honorable Timothy D. DeGiusti on 3/10/2014. (mb) (Entered: 03/10/2014)
03/24/2014	78	NOTICE (other) by All Defendants *(Joint Notice in Response to Court's March 10, 2014 Order)* (Berwick, Benjamin) (Entered: 03/24/2014)
03/26/2014	79	ORDER Staying Case re 78 Notice (other) filed by Kathleen Sebelius,

		Labor Department of, Department of the Treasury, Thomas E Perez, Jacob J Lew, Health and Human Services Department of. Signed by Honorable Timothy D. DeGiusti on 3/26/2014. (mb) (Entered: 03/26/2014)
03/26/2014	80	ADMINISTRATIVE CLOSING ORDER: This action is administratively terminated without prejudice during the pendency of the interlocutory appeal filed by Defendants. The Clerk shall reopen this case upon receipt of the Tenth Circuit's mandate. Signed by Honorable Timothy D. DeGiusti on 3/26/2014. (mb) (Entered: 03/26/2014)
03/31/2014	81	ORDER of USCA as to 71 Notice of Interlocutory Appeal filed by Kathleen Sebelius, Labor Department of, Department of the Treasury, Thomas E Perez, Jacob J Lew, Health and Human Services Department of (cpp) (Entered: 04/10/2014)
07/16/2015	82	USCA OPINION as to 71 Notice of Interlocutory Appeal filed by Kathleen Sebelius, Labor Department of, Department of the Treasury, Thomas E Perez, Jacob J Lew, Health and Human Services

		Department of. Affirmed and Reversed; Terminated on the merits after oral hearing. Mandate to issue. (cla) (Entered: 07/16/2015)
07/16/2015	83	USCA JUDGMENT as to 71 Notice of Interlocutory Appeal filed by Kathleen Sebelius, Labor Department of, Department of the Treasury, Thomas E Perez, Jacob J Lew, Health and Human Services Department of. (cla) (Entered: 07/16/2015)

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U.S. Court of Appeals for the Tenth Circuit

Court of Appeals Docket #: 13-1540

LITTLE SISTERS OF THE POOR, et al v. BURWELL, et al	Docketed: 12/27/2013 Terminated: 07/14/2015 Nature of Suit: 2440 Other Civil Rights
Trial Judge: William J. Martinez	Case Type Information: 1) Civil Rights 2) USA as party
Case: 1:13-cv-2611	

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12/27/2013	[10136467] Civil case docketed. Preliminary record filed. DATE RECEIVED: 12/27/2013. Fee, docketing statement, transcript order form, and entry of appearance due 01/10/2014 for Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. Entry of appearance due on 01/10/2014 for Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, United States Department of Health & Human Services, United States Department of Labor and United States Department of the Treasury.—[Edited 12/30/2013 by SDS to upload transmittal letter] [13-1540]

* * *

12/28/2013	[10136476] Motion filed by Appellants Christian Brothers Employee Benefit

Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. for injunction pending appeal. Served on: 12/28/2013. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] MR

* * *

12/30/2013 [10136641] Response filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury to Emergency Motion for Injunction Pending Appeal. Served on 12/30/2013. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] ACJ

12/30/2013 [10136747] Appellant/Petitioner's reply filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc.. 10 paper copies to be provided to the court. Served on 12/30/2013. Manner of Service: email. This pleading complies with all required (privacy, paper copy and

virus) certifications: Yes. [13-1540] MR

12/31/2013 [10137053] Order filed by Judges Kelly and Lucero denying appellants motion for injunction filed by appellants Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Services and Christian Brothers Employee Benefit Trust. Served on 12/31/2013. [13-1540]

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01/24/2014 [10143880] Order filed by the United States Supreme Court in pending case. Please refer to the order for specific information. Served on 01/24/2014. [13-1540]

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02/24/2014 [10151981] Appellant/Petitioner's brief filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc.. 7 paper copies to be provided to the court. Served on 02/24/2014 by email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] MR

02/24/2014 [10152156] Joint Appendix filed by Appellants Christian Brothers Employee Benefit Trust, Christian

Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc. and Appellees Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury. 2 copies. Appendix pages: 725. Number of volumes: 3. Hardcopy only. Served on 02/24/2014. Manner of Service: Overnight Mail. [13-1540]

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03/03/2014 [10154322] Amicus Curiae brief filed by Liberty, Life and Law Foundation. Original and 7 copies. Served on 03/03/2014. Manner of Service: email. [13-1540]

03/03/2014 [10154737] Amicus Curiae brief filed by United States Conference of Catholic Bishops. Original and 7 copies. Served on 03/03/2014. Manner of Service: email. [13-1540]

03/03/2014 [10154738] Amicus Curiae brief filed by American Bible Society, Association of Christian Schools International, Association of Gospel Rescue Missions, Ethics & Religious Liberty Commission of the Southern Baptist Convention, Institutional Religious Freedom Alliance and Christian Legal Society, National Association of Evangelicals, Prison Fellowship Ministries and The

Lutheran Church- Missouri Synod. 7 paper copies provied to the court. Served on 03/03/2014. Manner of Service: email. [13-1540]

03/03/2014 [10154742] Amicus Curiae brief filed by Liberty Counsel and Liberty University. Original and 6 copies. Served on 03/03/2014. Manner of Service: US mail, email. [13-1540]

03/03/2014 [10154772] Amicus Curiae brief filed by 67 Catholic Theologians and Ethicists. Original and 7 copies.. Served on 03/03/2014. Manner of Service: email. [13-1540]

03/03/2014 [10154786] Amicus Curiae brief filed by Concerned Women for America. 7 copies. Served on 03/03/2014. Manner of Service: email. [13-1540]

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03/06/2014 [10155404] Motion filed by Appellees Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, Appellants Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 14-6026, Appellants HHS, LABR, Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius in 14-6028 to consolidate appeals, to consolidate

briefs. Served on: 03/06/2014. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028, 14-6026] ACJ

* * *

03/18/2014 [10158567] Appellants' petition filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. for initial hearing en banc. Served on 03/18/2014. Manner of Service: email. [13-1540]

03/18/2014 [10158568] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. to Appellees' Motion to Consolidate Appeals in Part. Served on 03/18/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] MR

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03/21/2014 [10159555] Reply filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, HHS, LABR,

Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius in 14-6028 to Reply in Support of Government's Motion to Consolidate in Part. Served on 03/21/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028, 14-6026] ACJ

03/21/2014 [10159561] Response filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury to Petition for Hearing En Banc. Served on 03/21/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] ACJ

03/24/2014 [10159780] Reply filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. to Appellees Response to Petition for Hearing En Banc. Served on 03/24/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] MR

03/31/2014 [10161789] Order filed by Judges

Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes, Matheson, Bacharach, Phillips and McHugh denying appellants' Petition for Hearing En Banc. Please see attached order for additional information. Served on 03/31/2014. [13-1540]

03/31/2014 [10161813] Order filed by Judges Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes, Matheson, Bacharach, Phillips and McHugh denying the government's motion to consolidate appeals. Appeal numbers 14-6026 and 14-6028 will brief separately and will have separate appendices. The separate briefing will apply to the opening briefs, the response brief, and the optional reply brief. Likewise, the appeals will not be joined for a single oral argument hearing. The court will decide at a later date whether the same panel of judges will hear the matters, and will also determine how and when oral argument will proceed. Those issues remain for consideration. The opening brief and appendix for 14-6026 remains due 4/7/2014; the opening brief and appendix for 14-6028 remains due 4/14/2014; and the appellees' brief in 13-1540 remains due the date of this order. Please see order for additional important

information. Served on 03/31/2014. [13-1540, 14-6028, 14-6026]

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03/31/2014 [10162114] Appellee/Respondent's brief filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury. 7 paper copies to be provided to the court. Served on: 03/31/2014. Manner of service: email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] ACJ

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04/03/2014 [10164234] Amicus Curiae brief filed by ACLU of Colorado, ACLU and Americans United for Separation of Church and State. 7 paper copies provided to the court. Served on 04/03/2014. Manner of Service: email. [Entry created by clerk to docket brief as filed] [13-1540]

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04/07/2014 [10164156] Amicus Curiae brief submitted by National Health Law Program, American Public Health Association, National Family Planning & Reproductive Health Association, National Women's Health Network, National Latina Institute for Reproductive Health, et al. 7 paper copies to be provided to the court.

Served on 04/07/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes.—[Edited 04/07/2014 by SDS to remove from case 14-6028] [13-1540]—[Edited 04/10/2014 by KF This entry has been removed from the docket. Brief docketed and filed by clerk as of 4/7/14] MJP

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04/07/2014 [10164750] Amicus Curiae brief filed by American Association of University Women, American Federation of State, County and Municipal Employees (AFSCME), Black Women's Health Imperative, Feminist Majority Foundation, Ibis Reproductive Health, Merger Watch, NARAL Pro-Choice America, National Organization for Women (NOW) Foundation, National Partnership for Women and Families, National Women's Law Center, Planned Parenthood Association of Uath, Planned Parenthood of Kansas and Mid-Missouri, Planned Parenthood of the Heartland, Planned Parenthood of the Rocky Mountains, Inc., Raising Women's Voices for the Helath Care We Need and Service Employees International Union (SEIU). Original and 7 copies. Served on 04/07/2014. Manner of Service: email. [13-1540]

04/07/2014 [10165424] Amicus Curiae brief filed by American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Asian Americans Advancing Justice-Los Angeles, Black Women's Health Imperative, California Women's Law Center, Christie's Place, Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women's Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Latina Institute for Reproductive Health, National Women and AIDS Collective, National Women's Health Network and Sexuality Information and Educational Council of the U.S.. Original and. Served on 04/07/2014. Manner of Service: email. [13-1540]

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04/17/2014 [10167733] Appellant/Petitioner's reply brief filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc.. 7 paper copies to be provided to the court. Served on 04/17/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and

virus) certifications: Yes.—[Edited 04/17/2014 by SDS to correct number of paper copies to be provided] [13-1540] MR

05/30/2014 [10180008] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc.. Served on 05/30/2014. Manner of Service: email. [13-1540] MR

06/12/2014 [10183355] Supplemental authority filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury. Served on 06/12/2014. Manner of Service: email. [13-1540] ACJ

07/01/2014 [10187793] Order filed by Clerk of the Court (EAS) directing supplemental briefing. The plaintiffs separately, as well as the Secretary. shall file simultaneous supplemental briefs as set forth in the attached order on or before 07/22/2014. The briefs shall be no longer than 15 pages in 13 or 14 point font. 7 hard copies must be received by the clerk within 2 business days. Served on 07/01/2014. [13-1540, 14-6028, 14-6026]

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07/22/2014 [10193027] Appellee/Respondent's supplemental brief filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury. 7 paper copies to be provided to the court. Served on 07/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

07/22/2014 [10193105] Appellant's supplemental brief filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc.. 7 paper copies to be provided to the court. Served on 07/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] MR

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08/01/2014 [10195667] Order filed by Clerk of the Court (EAS) The government is ordered to file a written status report on or before Tuesday August 12, 2014, addressing the anticipated timetable for promulgation of the "interim final rules," whether these cases should continue to be scheduled for oral

argument, and any further information that may be relevant to assist the court. The plaintiffs may file separate responses to the status report no later than Tuesday, August 19, 2014. Served on 08/01/2014. [13-1540, 14-6026, 14-6028]

08/08/2014 10197252] Status report filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 08/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

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08/19/2014 [10199881] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. to Appellees' Status Report. Served on 08/19/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] MR

08/22/2014 [10200873] Status report filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 14-6026, 13-1540, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 08/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026, 14-6028, 13-1540] PN

08/27/2014 [10201699] Order filed by Clerk of the Court (EAS) upon consideration of the status reports and responses, the filing of simultaneous supplemental briefs are due on 09/08/2014 as set forth in the attached order. Each brief shall be no longer than 15 pages, double spaced, and in 13 point font. The parties need not submit hard copies. Served on 08/27/2014. [13-1540, 14-6026, 14-6028]

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09/08/2014 [10204556] Appellee/Respondent's supplemental brief filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury. 7 paper copies to be provided to the court. Served on 09/08/2014. Manner

of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] MB

09/08/2014 [10204665] Appellant's supplemental brief filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc.. 7 paper copies to be provided to the court. Served on 09/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] MR

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09/17/2014 [10207226] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 09/17/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

09/19/2014 [10207860] Order filed by Clerk of the Court These matters are vacated from the September 29, 2014 oral argument calendar and all counsel are

excused from appearance in Denver, Colorado on that date. The appeals will be reset for oral argument on Monday, December 8, 2014. Counsel will receive additional details as to the new argument setting via a separate communication. Served on 09/19/2014. [13-1540, 14-6026, 14-6028]

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11/18/2014 [10225361] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 11/18/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

12/02/2014 [10228984] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. to Appellees Supplemental Authority Letter. Served on 12/02/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540] DHB

12/08/2014 [10230446] Case argued by Mark

Rienzi for the Appellant and by Adam Jed for the Appellee; Submitted to Judges Matheson, McKay and Baldock. [13-1540]

12/08/2014 [10230642] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 12/08/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

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12/08/2014 [10230751] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028 to Government's Supplemental Authority Letter. Served on 12/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-

6028] DHB

12/09/2014 [10230972] Order filed by Judges Matheson, McKay and Baldock granting motion to release oral argument recordings filed by two members of the media. The oral argument recordings will be posted to the court's website to allow access. Served on 12/09/2014. [13-1540, 14-6026, 14-6028]

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01/26/2015 [10242714] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028. Served on 01/26/2015. Manner of Service: email. [13-1540, 14-6028] DHB

01/28/2015 [10243499] Errata sheet to supplemental authority filed by Mr. Daniel Howard Blomberg for Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Services and Christian Brothers Employee Benefit Trust in 13-1540, Mr. Daniel Howard

Blomberg for Reaching Souls International, Inc., Truett-McConnell College, Inc. and Guidestone Financial Resources of the Southern Baptist Convention in 14-6028. Original and 0 copies. Served on 01/28/2015. Manner of Service: email. [13-1540, 14-6028]—[Edited 01/28/2015 by LG to show errata to supplemental authority] DHB

01/30/2015 [10244434] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) letter.. Served on 01/30/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

02/10/2015 [10247082] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-

McConnell College, Inc. in 14-6028. Served on 02/10/2015. Manner of Service: email. [13-1540, 14-6028] DHB

02/11/2015 [10247577] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 02/11/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

02/13/2015 [10248039] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028 to Government's Notice of Supplemental Authority. Served on 02/13/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028] DHB

02/19/2015 [10249294] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Feb. 10 Notice of Supplemental Authority. Served on 02/19/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

03/10/2015 [10253639] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028. Served on 03/10/2015. Manner of Service: email. [13-1540, 14-6028] MR

03/11/2015 [10254104] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews

Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) about GVR. Served on 03/11/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

04/29/2015 [10267747] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028. Served on 04/29/2015. Manner of Service: email. [13-1540, 14-6028] DHB

04/29/2015 [10267930] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) Letter. Served on 04/29/2015. Manner of Service: email. This pleading

complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

05/21/2015 [10273760] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 05/21/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

05/26/2015 [10274574] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028 to Government's Notice of Supplemental Authority. Served on 05/26/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028] DHB

06/24/2015 [10281616] Supplemental authority

filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 06/24/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

07/09/2015 [10285379] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 07/09/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

07/14/2015 [10286343] Affirmed and Reversed; Terminated on the merits after oral hearing; Written, signed, published. Judges Matheson (authoring), McKay and Baldock (dissenting in part). Mandate to issue. [13-1540, 14-6026, 14-6028]

07/14/2015 [10286354] Judgment for opinion filed. [13-1540, 14-6026, 14-6028]

07/24/2015 [10289410] Petition for writ of certiorari filed by Denver Little

Sisters of the Poor Home for the Aged, Colorado on 07/23/2015. Supreme Court Number 15-105. [13-1540]

* * *

08/06/2015 [10292806] Motion filed by Appellants Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Appellees Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028, SOUTHERN NAZARENE UNIVERSITY; OKLAHOMA WESLEYAN UNIVERSITY, INC.; OKLAHOMA BAPTIST UNIVERSITY, INC., MID-AMERICA CHRISTIAN UNIVERSITY, INC. to stay execution of the mandate until 12/31/2015. Served on: 08/06/2015. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026. 14-6028] CCS

* * *

08/12/2015 [10294167] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-

1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Plaintiffs' Motion for Stay of Mandate. Served on 08/12/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ABK

08/12/2015 [10294233] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Plaintiffs' Motion for Stay of Mandate. Served on 08/12/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ABK

08/19/2015 [10295864] "Reply in Support of Their Motion for Stay of Mandate Pending Petitions for Writ of Certiorari" filed by Appellants Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540,

Appellees Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028, and SOUTHERN NAZARENE UNIVERSITY; OKLAHOMA WESLEYAN UNIVERSITY, INC., OKLAHOMA BAPTIST UNIVERSITY, INC.; MID-AMERICA CHRISTIAN UNIVERSITY, INC. in 14-6026. Served on: 08/19/2015. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes—[Edited 08/19/2015 by KF to correct the event code and modify the text.] [13-1540, 14-6026, 14-6028] CCS

08/21/2015 [10296442] Order filed by Judges Matheson, McKay and Baldock. The motion to stay the mandate is granted. Issuance of the mandate is stayed in these appeals pending the Supreme Court's consideration of the certiorari petitions. If the petitions are granted, the stay of the mandate shall continue until the Supreme Court's final disposition. Served on 08/21/2015. [13-1540, 14-6026, 14-6028]

09/03/2015 [10299849] Published order filed by Judges Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes,

Matheson, Bacharach, Phillips, McHugh and Moritz. A poll was called, sua sponte, to consider en banc rehearing. Upon consideration, a majority of the active judges voted to deny. Judges Kelly, Hartz, Tymkovich, Gorsuch, and Holmes voted to grant en banc rehearing. Judge Hartz has written separately in dissent. Judges Kelly, Tymkovich, Gorsuch and Holmes join in that dissent. [13-1540, 14-6026, 14-6028]

11/10/2015 [10318068] Supreme court order dated 11/06/2015 granting certiorari filed. The petition for a writ of certiorari is granted limited to Questions 1 and 2 presented by the petition. [13-1540]

U.S. Court of Appeals for the Tenth Circuit
Court of Appeals Docket #: 14-6028

REACHING SOULS INTERNATIONAL, et al. v. BURWELL, et al	Docketed: 02/12/2014 Terminated: 07/14/2015
Trial Judge: Timothy D. DeGiusti	Nature of Suit: 2440 Other Civil Rights
Case: 5:13-cv-1092	Case Type Information: 1) civil 2) USA as party

* * *

02/12/2014	[10149167] Civil case docketed. Preliminary record filed. DATE RECEIVED: 02/12/2014 Transcript order form and docketing statement due 02/26/2014 for Department of Health and Human Services, Department of Labor, Department of the Treasury, Jacob J. Lew, Thomas E. Perez and Kathleen Sebelius. Notice of appearance due on 02/26/2014 for Department of Health and Human Services, Department of Labor, Department of the Treasury, Guidestone Financial Resources of the Southern Baptist Convention, Jacob J. Lew, Thomas E. Perez, Reaching Souls International, Inc., Kathleen Sebelius and Truett-McConnell College, Inc. [14-6028]

* * *

03/06/2014	[10155404] Motion filed by Appellees Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United

States Department of Labor and United States Department of the Treasury in 13-1540, Appellants Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 14-6026, Appellants HHS, LABR, Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius in 14-6028 to consolidate appeals, to consolidate briefs. Served on: 03/06/2014. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028, 14-6026] ACJ

03/07/2014 [10155476] Order filed by Clerk of the Court (EAS). On or before March 18, 2014, the appellants in number 13-1540 (that is, Little Sisters of the Poor, et al.) and the appellees in numbers 14-6026 and 14-6028 (that is, Southern Nazarene University, et al., and Reaching Souls International, et al.) shall file a written response to the government's Motion to Consolidate Appeals in Part. Response due on 03/18/2014 for Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Mid-America

Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University, Southern Nazarene University, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc.. Served on 03/07/2014. [13-1540, 14-6028, 14-6026]

* * *

03/18/2014 [10158571] Response filed by Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. to Appellees' Motion to Consolidate Appeals in Part. Served on 03/18/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6028] MR

03/21/2014 [10159555] Reply filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, HHS, LABR, Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius in 14-6028 to Reply in Support of Government's Motion to Consolidate in Part. Served on 03/21/2014. Manner of Service: email.

This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028, 14-6026] ACJ

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03/31/2014 [10161813] Order filed by Judges Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes, Matheson, Bacharach, Phillips and McHugh denying the government's motion to consolidate appeals. Appeal numbers 14-6026 and 14-6028 will brief separately and will have separate appendices. The separate briefing will apply to the opening briefs, the response brief, and the optional reply brief. Likewise, the appeals will not be joined for a single oral argument hearing. The court will decide at a later date whether the same panel of judges will hear the matters, and will also determine how and when oral argument will proceed. Those issues remain for consideration. The opening brief and appendix for 14-6026 remains due 4/7/2014; the opening brief and appendix for 14-6028 remains due 4/14/2014; and the appellees' brief in 13-1540 remains due the date of this order. Please see order for additional important information. Served on 03/31/2014. [13-1540, 14-6028, 14-6026]

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04/14/2014 [10166232] Appellant/Petitioner's brief filed by HHS, LABR, Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius. 7 paper copies to be provided to the court. Served on 04/14/2014 by email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6028] PN

04/14/2014 [10167400] Appendix filed by Appellants HHS, LABR, Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius. 2 copies. Appendix pages: 262. Number of volumes: 2. Hardcopy only. Served on 04/14/2014. Manner of Service: US mail. [14-6028]

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04/21/2014 [10168853] Amici Curiae brief filed by American Association of University Women, American Federation of State, County and Municipal Employees (AFSCME), Black Women's Health Imperative, Ibis Reproductive Health, Legal Momentum, MergerWatch, NARAL Pro-Choice America, NARAL Pro-Choice Colorado, NARAL Pro-Choice Wyoming, National Organization for Women (NOW) Foundation, National Partnership for Women and Families, National Women's Law Center,

Planned Parenthood Association of Utah, Planned Parenthood of Kansas and Mid-Missouri, Planned Parenthood of the Heartland, Planned Parenthood of the Rocky Mountains, Inc., Population Connection, Raising Women's Voices for the Health Care We Need and Service Employees International Union. Original and 7 copies. Served on 04/21/2014. Manner of Service: email. [14-6028]

04/21/2014 [10169328] Amicus Curiae brief filed by ACLU, American Civil Liberties Union of Oklahoma, and Americans United for Separation of Church and State. Original and 7 copies. Served on 04/21/2014. Manner of Service: email. [14-6028]

04/21/2014 [10169843] Amicus Curiae brief filed by American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice | AAJC, Asian Americans Advancing Justice | Los Angeles, Black Women's Health Imperative, California Women's Law Center, Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women's Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Latina Institute for Reproductive Health, National Women and AIDS Collective,

National Women's Health Network and Sexuality Information, and Education Council of the U.S. (SIECUS). Original and 7 copies. Served on 04/21/2014. Manner of Service: email. [14-6028]

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05/19/2014 [10177257] Appellee/Respondent's brief filed by Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc.. 7 paper copies to be provided to the court. Served on: 05/19/2014. Manner of service: email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6028] SMR

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05/23/2014 [10178908] Amicus Curiae brief filed by American Center for Law and Justice. Original and 7 copies. Served on 05/23/2014. Manner of Service: email. [14-6028]

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05/27/2014 [10179368] Amici Curiae brief filed by Judicial Crisis Network and Women Speak for Themselves. Original and 7 copies. Served on 05/27/2014. Manner of Service: email. [14-6028]

05/27/2014 [10179649] Amicus Curiae brief filed by Ethics & Religious Liberty

Commission of the Southern Baptist Convention, International Mission Board of the Southern Baptist Convention, Southern Baptist Theological Seminary and Doctor R. Albert Mohler, Jr. Original and 7 copies. Served on 05/27/2014. Manner of Service: email. [14-6028]

05/27/2014 [10179692] Amicus Curiae brief filed by American Bible Society, Association of Christian Schools International, Association of Gospel Rescue Missions, Christian Legal Society, Institutional Religious Freedom Alliance, Lutheran Church Missouri Synod, National Association of Evangelicals and Prison Fellowship Ministries. Original and 7 copies. Served on 05/27/2014. Manner of Service: email. [14-6028]

05/27/2014 [10179697] Amicus Curiae brief filed by Alabama Physicians for Life, American Association of Pro-Life Obstetricians & Gynecologists, Association of American Physicians & Surgeons, Catholic Medical Association, Christian Medical Association, National Association of Catholic Nurses, National Association of Pro Life Nurses and National Catholic Bioethics Center. Original and 7 copies. Served on 05/27/2014. Manner of Service: email. [14-6028]

05/28/2014 [10179315] Amicus Curiae brief filed

by Concerned Women for America. Original and 7 copies. Served on 05/27/2014. Manner of Service: email. [14-6028]

* * *

06/24/2014 [10186167] Appellant/Petitioner's reply brief filed by HHS, LABR, Department of the Treasury. Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius. 7 paper copies to be provided to the court. Served on 06/24/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6028] PN

07/01/2014 [10187793] Order filed by Clerk of the Court (EAS) directing supplemental briefing. The plaintiffs separately, as well as the Secretary, shall file simultaneous supplemental briefs as set forth in the attached order on or before 07/22/2014. The briefs shall be no longer than 15 pages in 13 or 14 point font. 7 hard copies must be received by the clerk within 2 business days. Served on 07/01/2014. [13-1540, 14-6028, 14-6026]

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07/22/2014 [10193027] Appellee/Respondent's supplemental brief filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury. 7

paper copies to be provided to the court. Served on 07/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

07/22/2014 [10193111] Appellee/Respondent's supplemental brief filed by Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc.. 7 paper copies to be provided to the court. Served on 07/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6028] MR

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08/01/2014 [10195667] Order filed by Clerk of the Court (EAS) The government is ordered to file a written status report on or before Tuesday August 12, 2014, addressing the anticipated timetable for promulgation of the "interim final rules," whether these cases should continue to be scheduled for oral argument, and any further information that may be relevant to assist the court. The plaintiffs may file separate responses to the status report no later than Tuesday, August 19, 2014. Served on 08/01/2014. [13-1540, 14-6026, 14-6028]

08/08/2014 [10197252] Status report filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 08/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

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08/19/2014 [10199781] Response filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University and Southern Nazarene University to Appellants' Status Report. Served on 08/19/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026, 14-6028] GB

08/19/2014 [10199929] Response filed by Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. to Appellants' Status Report. Served on 08/19/2014. Manner of Service: email. This pleading complies with all

required (privacy, paper copy and virus) certifications: Yes. [14-6028] MR

08/22/2014 [10200873] Status report filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 14-6026, 13-1540, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 08/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026, 14-6028, 13-1540] PN

08/27/2014 [10201699] Order filed by Clerk of the Court (EAS) upon consideration of the status reports and responses, the filing of simultaneous supplemental briefs are due on 09/08/2014 as set forth in the attached order. Each brief shall be no longer than 15 pages, double spaced, and in 13 point font. The parties need not submit hard copies. Served on 08/27/2014. [13-1540, 14-6026, 14-6028]

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09/08/2014 [10204556] Appellee/Respondent's supplemental brief filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United

States Department of the Treasury. 7 paper copies to be provided to the court. Served on 09/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] MB

09/08/2014 [10204667] Appellee/Respondent's supplemental brief filed by Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc.. 7 paper copies to be provided to the court. Served on 09/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6028] [Edited to remove brief from 13-1540—Edited 09/09/2014 by NA] MR

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09/17/2014 [10207226] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 09/17/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

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11/18/2014 [10225361] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 11/18/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

12/05/2014 [10230266] Supplemental authority filed by Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc.. Served on 12/05/2014. Manner of Service: email. [14-6028] SMR

12/08/2014 [10230457] Case argued by Adam Jed for Appellant, and by Mark Rienzi for the Appellee; Submitted to Judges Matheson, McKay and Baldock. [14-6028]

12/08/2014 [10230642] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E.

Perez in 14-6028. Served on 12/08/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

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12/08/2014 [10230751] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028 to Government's Supplemental Authority Letter. Served on 12/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028] DHB

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01/26/2015 [10242714] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028.

Served on 01/26/2015. Manner of Service: email. [13-1540, 14-6028] DHB

01/28/2015 [10243499] Errata sheet to supplemental authority filed by Mr. Daniel Howard Blomberg for Little Sisters of the Poor Home for the Aged, Denver, Colorado, Little Sisters of the Poor, Baltimore, Inc., Christian Brothers Services and Christian Brothers Employee Benefit Trust in 13-1540, Mr. Daniel Howard Blomberg for Reaching Souls International, Inc., Truett-McConnell College, Inc. and Guidestone Financial Resources of the Southern Baptist Convention in 14-6028. Original and 0 copies. Served on 01/28/2015. Manner of Service: email. [13-1540, 14-6028]—[Edited 01/28/2015 by LG to show errata to supplemental authority] DHB

01/30/2015 [10244434] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) letter.. Served on 01/30/2015. Manner of Service: email. This pleading complies with all required (privacy,

paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

02/10/2015 [10247082] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028. Served on 02/10/2015. Manner of Service: email. [13-1540, 14-6028] DHB

02/11/2015 [10247577] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 02/11/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

02/13/2015 [10248039] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in

13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028 to Government's Notice of Supplemental Authority. Served on 02/13/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028] DHB

02/19/2015 [10249294] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Feb. 10 Notice of Supplemental Authority. Served on 02/19/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

03/10/2015 [10253639] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone

Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028. Served on 03/10/2015. Manner of Service: email. [13-1540, 14-6028] MR

03/11/2015 [10254104] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury. Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) about GVR. Served on 03/11/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

04/29/2015 [10267747] Supplemental authority filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028. Served on 04/29/2015. Manner of Service: email. [13-1540, 14-6028]

DHB

04/29/2015 [10267930] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) Letter. Served on 04/29/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

05/21/2015 [10273760] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 05/21/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

05/26/2015 [10274574] Response filed by Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Guidestone Financial

Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028 to Government's Notice of Supplemental Authority. Served on 05/26/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028] DHB

06/24/2015 [10281616] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 06/24/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

07/09/2015 [10285379] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 07/09/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028]

	ACJ
07/14/2015	[10286343] Affirmed and Reversed; Terminated on the merits after oral hearing; Written, signed, published. Judges Matheson (authoring), McKay and Baldock (dissenting in part). Mandate to issue. [13-1540, 14-6026, 14-6028]
07/14/2015	[10286354] Judgment for opinion filed. [13-1540, 14-6026, 14-6028]
07/28/2015	[10290163] Petition for a writ of certiorari filed by Southern Nazarene University, et al., on 07/24/2015. Supreme Court Number 15-119. [14-6026, 14-6028]
08/06/2015	[10292806] Motion filed by Appellants Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Appellees Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028, SOUTHERN NAZARENE UNIVERSITY; OKLAHOMA WESLEYAN UNIVERSITY, INC.; OKLAHOMA BAPTIST UNIVERSITY, INC., MID-AMERICA CHRISTIAN UNIVERSITY, INC. to stay execution of the mandate until 12/31/2015. Served on: 08/06/2015.

Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] CCS

* * *

08/12/2015 [10294167] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Plaintiffs' Motion for Stay of Mandate. Served on 08/12/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ABK

08/12/2015 [10294233] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Plaintiffs' Motion for Stay of Mandate. Served on 08/12/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy

and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ABK

08/19/2015 [10295864] "Reply in Support of Their Motion for Stay of Mandate Pending Petitions for Writ of Certiorari" filed by Appellants Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Appellees Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028, and SOUTHERN NAZARENE UNIVERSITY; OKLAHOMA WESLEYAN UNIVERSITY, INC.; OKLAHOMA BAPTIST UNIVERSITY, INC.; MID-AMERICA CHRISTIAN UNIVERSITY, INC. in 14-6026. Served on: 08/19/2015. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes—[Edited 08/19/2015 by KF to correct the event code and modify the text.] [13-1540, 14-6026, 14-6028] CCS

08/21/2015 [10296442] Order filed by Judges Matheson, McKay and Baldock. The motion to stay the mandate is granted. Issuance of the mandate is

	stayed in these appeals pending the Supreme Court's consideration of the certiorari petitions. If the petitions are granted, the stay of the mandate shall continue until the Supreme Court's final disposition. Served on 08/21/2015. [13-1540, 14-6026, 14-6028]
09/03/2015	[10299849] Published order filed by Judges Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes, Matheson, Bacharach, Phillips, McHugh and Moritz. A poll was called, sua sponte, to consider en banc rehearing. Upon consideration, a majority of the active judges voted to deny. Judges Kelly, Hartz, Tymkovich, Gorsuch, and Holmes voted to grant en banc rehearing. Judge Hartz has written separately in dissent. Judges Kelly, Tymkovich, Gorsuch and Holmes join in that dissent. [13-1540, 14-6026, 14-6028]
11/10/2015	[10318052] Supreme court order dated 11/06/2015 granting certiorari filed. [14-6026, 14-6028]

U.S. Department of Health and Human Services
www.hhs.gov
HRSA Health Resources and Services Administration
Women's Preventive Services Guidelines

Affordable Care Act Expands Prevention Coverage for Women's Health and Well-Being

The Affordable Care Act – the health insurance reform legislation passed by Congress and signed into law by President Obama on March 23, 2010 – helps make prevention affordable and accessible for all Americans by requiring health plans to cover preventive services and by eliminating cost sharing for those services. Preventive services that have strong scientific evidence of their health benefits must be covered and plans can no longer charge a patient a copayment, coinsurance or deductible for these services when they are delivered by a network provider.

Women's Preventive Services Guidelines Supported by the Health Resources and Services Administration

Under the Affordable Care Act, women's preventive health care – such as mammograms, screenings for cervical cancer, prenatal care, and other services – generally must be covered by health plans with no cost sharing. However, the law recognizes and HHS understands the need to take into account the unique health needs of women throughout their lifespan.

The HRSA-supported health plan coverage guidelines, developed by the Institute of Medicine

(IOM), will help ensure that women receive a comprehensive set of preventive services without having to pay a co-payment, co-insurance or a deductible. HHS commissioned an IOM study to review what preventive services are necessary for women's health and well-being and therefore should be considered in the development of comprehensive guidelines for preventive services for women. HRSA is supporting the IOM's recommendations on preventive services that address health needs specific to women and fill gaps in existing guidelines.

Health Resources and Services Administration Women's Preventive Services Guidelines

Non-grandfathered plans (plans or policies created or sold after March 23, 2010, or older plans or policies that have been changed in certain ways since that date) generally are required to provide coverage without cost sharing consistent with these guidelines in the first plan year (in the individual market, policy year) that begins on or after August 1, 2012.

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Well-woman visits.	Well-woman preventive care visit annually for adult women to obtain the recommended preventive services that are age and	Annual, although HHS recognizes that several visits may be needed to obtain all necessary recommended preventive

	developmentally appropriate, including preconception care and many services necessary for prenatal care. This well-woman visit should, where appropriate, include other preventive services listed in this set of guidelines, as well as others referenced in section 2713.	services, depending on a woman's health status, health needs, and other risk factors. * (*see note*)
Screening for gestational diabetes.	Screening for gestational diabetes.	In pregnant women between 24 and 28 weeks of gestation and at the first prenatal visit for pregnant women identified to be at high risk for diabetes.
Human papilla-mavirus testing	High-risk human papillomavirus DNA testing in women with normal cytology results.	Screening should begin at 30 years of age and should occur no more frequently than every 3 years.
Counseling for	Counseling on sexually	Annual.

sexually transmitted infections.	transmitted infections for all sexually active women.	
Counseling and screening for human immune-deficiency virus.	Counseling and screening for human immune-deficiency virus infection for all sexually active women.	Annual.
Contra-ceptive methods and counseling. ** (*see note*)	All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.	As prescribed.

Breastfeeding support, supplies, and counseling.	Comprehensive lactation support and counseling, by a trained provider during pregnancy and/or in the postpartum period, and costs for renting breastfeeding equipment.	In conjunction with each birth.
Screening and counseling for interpersonal and domestic violence.	Screening and counseling for interpersonal and domestic violence.	

* *Refer to guidance issued by the Center for Consumer Information and Insurance Oversight entitled* Affordable Care Act Implementation FAQs. Set 12. Q10. *In addition, refer to recommendations in the July 2011 IOM report entitled Clinical Preventive Services for Women: Closing the Gaps concerning distinct preventive services that may be obtained during a well-woman preventive services visit.*

** *The guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers. Effective August 1, 2013, a religious employer is*

defined as an employer that is organized and operates as a non-profit entity and is referred to in section 6033(8)(3)(A)(i) or (iii) of the Internal Revenue Code. HRSA notes that, as of August 1, 2013, group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the requirement to cover contraceptive services under section 2713 of the Public Health Service Act, as incorporated into the Employee Retirement Income Security Act and the Internal Revenue Code. HRSA also notes that, as of January 1, 2014, accommodations are available to group health plans established or maintained by certain eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations, with respect to the contraceptive coverage requirement. See Federal Register Notice: Coverage of Certain Preventive Services Under the Affordable Care Act *(PDF – 327 KB)*

For Consumers

Birth Control: Medicines To Help You

Introduction

If you do not want to get pregnant, there are many birth control options to choose from. No one product is best for everyone. The only sure way to avoid pregnancy and sexually transmitted infections (STIs or STDs) is not to have any sexual contact (abstinence). This guide lists FDA-approved products for birth control. Talk to your doctor, nurse, or pharmacist about the best method for you.

There are different kinds of medicines and devices for birth control:

Barrier Methods

Hormonal Methods

Emergency Contraception

Implanted Devices

Permanent Methods

Some things to think about when you choose birth control:

- Your health.
- How often you have sex.
- How many sexual partners you have.
- If you want to have children in the future.
- If you will need a prescription or if you can buy the method over-the-counter.
- The number of pregnancies expected per 100 women who use a method for one year. For comparison, about 85 out of 100 sexually active women who do not use any birth control can expect to become pregnant in a year.

- This booklet lists pregnancy rates of **typical use**. Typical use shows how effective the different methods are during actual use (including sometimes using a method in a way that is not correct or not consistent).
- For more information on the chance of getting pregnant while using a method, please see Trussell, J. (2011). "Contraceptive failure in the United States." Contraception 83(5): 397 404. [1,2]

Tell your doctor, nurse, or pharmacist if you:

- Smoke.
- Have liver disease.
- Have blood clots.
- Have family members who have had blood clots.
- Are taking any other medicines, like antibiotics.
- Are taking any herbal products, like St. John's Wort.

To avoid pregnancy:

- No matter which method you choose, it is important to follow all of the directions carefully. If you don't, you raise your chance of getting pregnant.
- The best way to avoid pregnancy and sexually transmitted infections (STIs) is to practice total abstinence (do not have any sexual contact).

BARRIER METHODS: Block sperm from reaching the egg[3]

Male Condom

What is it?

- A thin film sheath placed over the erect penis.

How do I use it?

- Put it on the erect penis right before sex.
- Pull out before the penis softens.
- Hold the condom against the base of the penis before pulling out.
- Use it only once and then throw it away.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter or online.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, 18 may get pregnant.
- The most important thing is that you use a condom every time you have sex.

Some Risks

- Irritation
- Allergic reactions (If you are allergic to latex, you can try condoms made of polyurethane.

Does it protect me from sexually transmitted infections (STIs)?

- Yes. Except for abstinence, latex condoms are the best protection against HIV/AIDS and other STIs

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Female Condom

What is it?

- A thin, lubricated pouch that is put into the vagina. It is created from man-made materials. It is not made with natural rubber latex.

How do I use it?

- Put the female condom into the vagina before sex.
- Follow the directions on the package to be sure the penis stays within the condom during sex and does not move alongside the condom.
- Use it once and then throw it away.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter or online.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year.)

- Out of 100 women who use this method, about 21 may get pregnant.
- The most important thing is that you use a condom every time you have sex.

Some Risks

- Irritation
- Allergic reactions

Does it protect me from sexually transmitted infections (STIs)?

- Yes.
- Natural rubber latex condoms for men are highly effective at preventing sexually transmitted infections, including HIV/AIDS, if used correctly If you are not going to use a male condom, you can use the female condom to help protect yourself and your partner.

Diaphragm with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

What is it?

- A dome-shaped flexible disk with a flexible rim.
- Made from latex rubber or silicone.
- It covers the cervix.

How do I use it?

- You need to put spermicidal jelly on the inside of the diaphragm before putting it into the vagina.
- You must put the diaphragm into the vagina before having sex.
- You must leave the diaphragm in place at least 6 hours after having sex.
- It can be left in place for up to 24 hours. You need to use more spermicide every time you have sex.

How do I get it?

- You need a prescription.
- A doctor or nurse will need to do an exam to find the right size diaphragm for you.
- You should have the diaphragm checked after childbirth or if you lose more than 15 pounds. You might need a different size.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 12 may get pregnant.

Some Risks

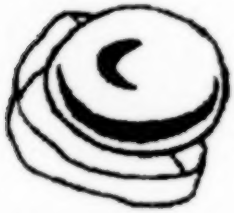
- Irritation, allergic reactions, and urinary tract infection.

- If you keep it in place longer than 24 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No.

Sponge with spermcide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.



What is it?

- A disk-shaped polyurethane device with the spermicide nonoxynol-9.

How do I use it?

- Put it into the vagina before you have sex.
- Protects for up to 24 hours.
- You do not need to use more spermicide each time you have sex.
- You must leave the sponge in place for at least 6 hours after having sex.
- You must take the sponge out within 30 hours after you put it in. Throw it away after you use it.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, 12 to 24 may get pregnant.
- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the sponge may not fit as well.

Some Risks

- Irritation
- Allergic reactions
- Some women may have a hard time taking the sponge out.
- If you keep it in place longer than 24-30 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No.

Cervical Cap with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

What is it?

- A soft latex or silicone cup with a round rim, which fits snugly around the cervix.

How do I use it?

- You need to put spermicidal jelly inside the cap before you use it.
- You must put the cap in the vagina before you have sex.
- You must leave the cap in place for at least 6 hours after having sex.
- You may leave the cap in for up to 48 hours.
- You do NOT need to use more spermicide each time you have sex.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 17 to 23 may get pregnant.
- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the cap may not fit as well.

Some Risks

- Irritation, allergic reactions, and abnormal Pap test.
- You may find it hard to put in.
- If you keep it in place longer than 48 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No.

Spermicide Alone

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

What is it?

- A foam, cream, jelly, film, or tablet that you put in the vagina.

How do I use it?

- You need to put spermicide into the vagina 5 to 90 minutes before you have sex.
- You usually need to leave it in place at least 6 to 8 hours after sex; do not douche or rinse the vagina at least 6 hours after sex.
- Instructions can be different for each type of spermicide. Read the label before you use it.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 28 may get pregnant.
- Different studies show different rates of effectiveness.

Some Risks

- Irritation
- Allergic reactions
- Urinary tract infection
- If you are also using a medicine for a vaginal yeast infection, the spermicide might not work as well.

Does it protect me from sexually transmitted infections (STIs)? No.

HORMONAL METHODS: Prevent Pregnancy by interfering with ovulation and possibly fertilization of the egg

Oral Contraceptives (Combined Pill)

"The Pill"

What is it?

- A pill that has two hormones (estrogen and progestin) to stop the ovaries from releasing eggs

- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss one or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects

- Changes in your cycle (period)
- Nausea
- Breast tenderness
- Headache

Less Common Serious Side Effects

- It is not common, but some women who take the pill develop high blood pressure.
- It is rare, but some women will have blood clots, heart attacks, or strokes.

Does it protect me from sexually transmitted infections (STIs)? No.

Oral Contraceptives (Progestin-only)

"The Mini Pill"

What is it?

- A pill that has only one hormone, a progestin.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- Less often, it stops the ovaries from releasing eggs.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss one or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects

- Irregular bleeding
- Headache
- Breast tenderness
- Nausea
- Dizziness

Does it protect me from sexually transmitted infections (STIs)? No.

Oral Contraceptives (Extended/Continuous Use)

"Pill"

What is it?

- A pill that has two hormones (estrogen and progestin) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.
- These pills are designed so women have fewer or no periods.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss one or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects and Risks

- Risks are similar to other oral contraceptives with estrogen and progestin.
- You may have more light bleeding and spotting between periods than with 21 or 24 day oral contraceptives.
- It may be harder to know if you become pregnant, since you will likely have fewer periods or no periods.

Does it protect me from sexually transmitted infections (STIs)? No.

Patch

What is it?

- This is a skin patch you can wear on the lower abdomen, buttocks, or upper arm or back.
- It has two hormones (estrogen and progestin) that stop the ovaries from releasing eggs
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

How do I use it?

- You put on a new patch and take off the old patch once a week for 3 weeks (21 total days).
- Don't put on a patch during the fourth week. Your menstrual period should start during this patch-free week.
- If the patch comes loose or falls off, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Risks

- It will expose you to higher levels of estrogen compared to most combined oral contraceptives.
- It is not known if serious risks, such as blood clots and strokes, are greater with the patch because of the greater exposure to estrogen.

Does it protect me from sexually transmitted infections (STIs)? No.

Vaginal Contraceptive Ring

What is it?

- It is a flexible ring that is about 2 inches round.
- It releases two hormones (progestin and estrogen) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

How do I use it?

- You put the ring into your vagina.
- Keep the ring in your vagina for 3 weeks and then take it out for 1 week. Your menstrual period should start during this ring-free week.
- If the ring falls out and stays out for more than 3 hours, replace it but use another method of birth control, like a condom, until the ring has been in place for 7 days in a row.
- Read the directions and talk to your doctor, nurse or pharmacist about what to do.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects and Risks

- Vaginal discharge, discomfort in the vagina and mild irritation.
- Other risks are similar to oral contraceptives (combined pill).

Does it protect me from sexually transmitted infections (STIs)? No.

Shot/Injection

What is it?

- A shot of the hormone progestin, either in the muscle or under the skin.

How does it work?

- The shot stops the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps the sperm from getting to the egg.

How do I get it?

- You need one shot every 3 months from a healthcare provider.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, including women who don't get the shot on time, 6 may get pregnant.

Some Risks

- You may lose bone density if you get the shot for more than 2 years in a row.
- Bleeding between periods
- Headaches
- Weight gain
- Nervousness

- Abdominal discomfort

Does it protect me from sexually transmitted infections (STIs)? No.

EMERGENCY CONTRACEPTION: May be used if you did not use birth control or if your regular birth control fails. It should not be used as a regular form of birth control

Plan B, Plan B One- Step and Next Choice (Levonorgestrel)

What is it?

- These are pills with the hormone progestin.
- They help prevent pregnancy after birth control failure or unprotected sex.

How does it work?

- It works mainly by stopping the release of an egg from the ovary. It may also work by preventing fertilization of an egg (the uniting of sperm with the egg) or by preventing attachment (implantation) to the womb (uterus).
- For the best chance for it to work, you should start taking the pill(s) as soon as possible after unprotected sex.
- You should take emergency contraception within three days after having unprotected sex.

How do I get it?

- You can buy **Plan B One-Step** over-the-counter. You do not need a prescription.
- You can buy Plan B and Next Choice over-the-counter if you are age 17 years or older. If you are younger than age 17, you need a prescription.

Chance of getting pregnant

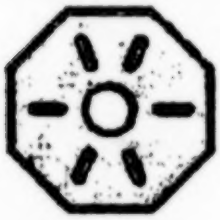
- Seven out of every 8 women who would have gotten pregnant will not become pregnant after taking Plan B, Plan B One-Step, or Next Choice.

Some Risks

- Nausea, vomiting, abdominal pain, fatigue and headache

Does it protect me from sexually transmitted infections (STIs)? No.

Ella (ulipristal acetate)



What is it?

- A pill that blocks the hormone progesterone.
- It helps prevent pregnancy after birth control failure or unprotected sex.
- It works mainly by stopping or delaying the ovaries from releasing an egg. It may also work by changing the lining of the womb (uterus) that may prevent attachment (implantation).

How do I use it?

- For the best chance for it to work, you should take the pill as soon as possible after unprotected sex.
- You should take Ella within five days after unprotected sex.

How do I get it?

- You need a prescription.

Chance of getting pregnant

- Six or 7 out of every 10 women who would have gotten pregnant will not become pregnant after taking ella.

Some Risks

- Headache
- Nausea
- Abdominal pain
- Menstrual pain
- Tiredness
- Dizziness

Does it protect me from sexually transmitted infections (STIs)? No.

IMPLANTED DEVICES: Inserted/implanted into the body and can be kept in place for several years

Copper IUD

What is it?

- A T-shaped device containing copper that is put into the uterus by a healthcare provider.

How does it work?

- The IUD prevents sperm from reaching the egg, from fertilizing the egg, and may prevent the egg from attaching (implanting) in the womb (uterus).
- It does not stop the ovaries from making an egg each month.
- The Copper IUD can be used for up to 10 years.
- After the IUD is taken out, it is possible to get pregnant.

How do I get it?

- A doctor or other healthcare provider needs to put in the IUD.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Cramps
- Irregular bleeding

Uncommon Risks

- Pelvic inflammatory disease
- Infertility

Rare Risk

- IUD is stuck in the uterus or found outside the uterus.
- Life-threatening infection.

Does it protect me from sexually transmitted infections (STIs)? No.

IUD with progestin

What is it?

- A T-shaped device containing a progestin that is put into the uterus by a healthcare provider.

How does it work?

- It may thicken the mucus of your cervix, which makes it harder for sperm to get to the egg, and also thins the lining of your uterus.
- After a doctor or other healthcare provider puts in the IUD, it can be used for up to 3 to 5 years, depending on the type.
- After the IUD is taken out, it is possible to get pregnant.

How do I get it?

- A doctor or other healthcare provider needs to put in the IUD.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Irregular bleeding

- No periods
- Abdominal/pelvic pain
- Ovarian cysts

Uncommon Risks

- Pelvic inflammatory disease
- Infertility

Rare Risk

- IUD is stuck in the uterus or found outside the uterus.
- Life-threatening infection.

Does it protect me from sexually transmitted infections (STIs)? No.

Implantable Rod

What is it?

- A thin, matchstick-sized rod that contains the hormone progestin.
- It is put under the skin on the inside of your upper arm.

How does it work?

- It stops the ovaries from releasing eggs.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- It can be used for up to 3 years.

How do I get it?

- After giving you local anesthesia, a doctor or nurse will put it under the skin of your arm with a special needle.

Chances of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Changes in bleeding patterns
- Weight gain
- Breast and abdominal pain

Does it protect me from sexually transmitted infections (STIs)? No.

PERMANENT METHODS: For people who are sure they never want to have a child or do not want any more children.

Sterilization Surgery for Men (Vasectomy)

This method is for men who are sure they never want to have a child or do not want any more children. If you are thinking about reversal, vasectomy may not be right for you. Sometimes it is possible to reverse the operation, but there are no guarantees. Reversal involves complicated surgery that might not work.

What is it?

- This is a surgery a man has only once.
- It is permanent.

How does it work?

- A surgery blocks the man's deferens (the tubes that carry sperm from the testes to other glands).
- Semen (the fluid that comes out of a man s penis) never has any sperm in it.
- It takes about three months to clear sperm out of a man's system. You need to use another form of birth control until a test shows there are no longer any sperm in the seminal fluid.

How do I get it?

- A man needs to have surgery.
- Local anesthesia is used.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women whose partner has had a vasectomy, less than 1 may get pregnant.

Some Risks

- Pain
- Bleeding
- Infection

Does it protect me from sexually transmitted infections (STI)? No

The success of reversal surgery depends on:

- The length of time since the vasectomy was performed.
- Whether or not antibodies to sperm have developed.
- The method used for vasectomy.
- Length and location of the segments of vas deferens that were removed or blocked.

Sterilization Surgery for Women

Surgical Implant (also called trans-abdominal surgical sterilization)

What is it?

- A device is placed on the outside of each fallopian tube.

How does it work?

- One way is by tying and cutting the tubes—this is called tubal ligation. The fallopian tubes also can be sealed using an instrument with an electrical current. They also can be closed with clips, clamps, or rings. Sometimes, a small piece of the tube is removed.

- The woman's fallopian tubes are blocked so the egg and sperm can't meet in the fallopian tube. This stops you from getting pregnant.
- This is a surgery a woman has only once.
- It is permanent.

How do I get it?

- This is a surgery you ask for.
- You will need general anesthesia.

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Risks

- Pain
- Bleeding
- Infection or other complications after surgery
- Ectopic (tubal) pregnancy

Does it protect me from sexually transmitted infections (STIs)? No.

Sterilization Implant for Women (Transcervical Surgical Sterilization Implant)

What is it?

- Small flexible, metal coil that is put into the fallopian tubes through the vagina.
- The device works by causing scar tissue to form around the coil. This blocks the fallopian tubes and stops you from getting pregnant.

How does it work?

- The device is put inside the fallopian tube with a special catheter.
- You need to use another birth control method during the first 3 months. You will need an X-ray to make sure the device is in the right place.
- It is permanent.

How do I get it?

- The devices are placed into the tubes using a camera placed in the uterus.
- Once the tubes are found, the devices are inserted. No skin cutting (incision) is needed.
- You may need local anesthesia.
- Since it is inserted through the vagina, you do not need an incision (cutting).

Chance of getting pregnant with typical use (Number of pregnancies expected per 100 women who use this method for one year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Risks

- Mild to moderate pain after insertion
- Ectopic (tubal) pregnancy

Does it protect me from sexually transmitted infections (STIs)? No.

To Learn More:

This guide should not be used in place of talking to your doctor or reading the label for your product. The product and risk information may change.

To get the most recent information for your birth control go to:

Drugs:
http://www.accessdata.fda.gov/scripts/cder/drugsatfda [4] (type in the name of your drug)

Devices:
http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm[5] (type in the name of your device)

Updated May 2013

Page Last Updated: 08/27/2013

Note: If you need help accessing information in different file formats, see Instructions for Downloading Viewers and Players.

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Links on this page:

1. http://www.kupferkette.info/downloads/contraceptive-failure-in-the-united-states—-2.pdf
2. http://www.fda.gov/AboutFDA/AboutThisWebsite/WebsitePolicies/Disclaimers/default.htm
3. javascript:void(0);/*1343680975526*/
4. http://www.accessdata.fda.gov/scripts/cder/drugsatfda
5. http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm

HHS.gov
U.S. Department of Health & Human Services

News Release

FOR IMMEDIATE RELEASE	Contact:	HHS Press Office
January 20, 2012	(202) 690-6343	

A statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius

In August 2011, the Department of Health and Human Services issued an interim final rule that will require most health insurance plans to cover preventive services for women including recommended contraceptive services without charging a co-pay, co-insurance or a deductible. The rule allows certain non-profit religious employers that offer insurance to their employees the choice of whether or not to cover contraceptive services. Today the department is announcing that the final rule on preventive health services will ensure that women with health insurance coverage will have access to the full range of the Institute of Medicine's recommended preventive services, including all FDA-approved forms of contraception. Women will not have to forego these services because of expensive co-pays or deductibles, or because an insurance plan doesn't include contraceptive services. This rule is consistent with the laws in a majority of states which already require contraception coverage in health plans, and includes the exemption in the interim final rule allowing certain religious organizations not to provide contraception coverage. Beginning August 1, 2012, most new and renewed health plans will be

required to cover these services without cost sharing for women across the country.

After evaluating comments, we have decided to add an additional element to the final rule. Nonprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law. Employers wishing to take advantage of the additional year must certify that they qualify for the delayed implementation. This additional year will allow these organizations more time and flexibility to adapt to this new rule. We intend to require employers that do not offer coverage of contraceptive services to provide notice to employees, which will also state that contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support. We will continue to work closely with religious groups during this transitional period to discuss their concerns.

Scientists have abundant evidence that birth control has significant health benefits for women and their families, is documented to significantly reduce health costs, and is the most commonly taken drug in America by young and middle-aged women. This rule will provide women with greater access to contraception by requiring coverage and by prohibiting cost sharing.

This decision was made after very careful consideration, including the important concerns some have raised about religious liberty. I believe this proposal strikes the appropriate balance between

respecting religious freedom and increasing access to important preventive services. The administration remains fully committed to its partnerships with faith-based organizations, which promote healthy communities and serve the common good. And this final rule will have no impact on the protections that existing conscience laws and regulations give to health care providers.

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Note: All HHS news releases, fact sheets and other press materials are available at *http://www.hhs.gov/news.*

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Follow HHS Secretary Kathleen Sebelius on Twitter @Sebelius.

Last revised: February 2, 2012

Little Sisters of the Poor
Caring for the Elderly Poor throughout the World

Provincial Residence
601 Maiden Choice Lane
Baltimore, Maryland 21228-3698
Phone: 410-744-9367
Fax: 410-747-0601

April 8, 2013

Submitted Electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: **Notice of Proposed Rulemaking on Preventive Services**
File Code No. CMS-9968-P

Dear Sir or Madam:

On behalf of the Little Sisters of the Poor, we respectfully submit the following comments on the Notice of Proposed Rulemaking on preventive services.[1]

The Little Sisters of the Poor are an international Congregation of Catholic women religious serving 13,000 needy elderly people of all faiths in thirty-one countries around the world. Thirty of our homes for the aged, which together care for over 2,500 elderly

[1] 78 Fed. Reg. 8456 (Feb. 6, 2013).

poor, are located in the United States.[2] We are filing these comments because the HHS Mandate threatens the operation of these homes. After the safe harbor ends, we may be subjected to steep financial penalties for not changing our health coverage arrangements at these homes to ensure coverage of female sterilization and all FDA-approved contraceptives, including abortifacient drugs and devices.

We have explained our religiously based objections to the HHS Mandate in our public statements, which we have included with these comments.[3] These

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[2] These homes are located in Queens Village, New York; Bronx, New York; Latham, New York; Enfield, Connecticut; Flemington, New Jersey; Pawtucket, Rhode Island; Philadelphia, Pennsylvania; Scranton, Pennsylvania; Somerville, Massachusetts; Totowa, New Jersey; Baltimore, Maryland; Cincinnati, Ohio; Cleveland, Ohio; Indianapolis, Indiana; Mobile, Alabama; Newark, Delaware; Oregon, Ohio; Pittsburgh, Pennsylvania; Henrico, Virginia; Washington DC; Palatine, Illinois; Chicago, Illinois; Denver, Colorado; Evansville, Indiana; Gallup, New Mexico; Kansas City, Missouri; Louisville, Kentucky; Saint Louis, Missouri; Saint Paul, Minnesota; San Francisco, California; and San Pedro, California. *See* Little Sisters of the Poor, Homes Directory, *at http://www.littlesistersofthepoor.org/resources/our-homes-directory*.

[3] *See* Statement of the Little Sisters of the Poor on the HHS Mandate (March 1, 2012), *at http://www.littlesistersofthepoor.org/44-news-a-events/259-lsp-statement-on-hhs-preventive-services-mandate*; Little Sisters of the Poor, Update on Our Position on the HHS Mandate (Dec. 23, 2012), *at http://www.littlesistersofthepoor.org/component/content/article/44-news-a-events/303-update-on-our-position-on-the-hhs-mandate*; *see also* Mary Frances Boyle, *If God Fills the House, He Will Not Abandon It: Little Sister of the Poor Offers Insight on HHS Mandate and Its Consequences*, National Catholic Register (Sep. 28, 2012), *available at*

comments do not repeat these objections, but instead explain why the proposed exemption and proposed accommodation do not alleviate the burden that the HHS Mandate imposes on our religious exercise. By describing how the proposed exemption excludes our homes and by explaining why the proposed accommodation does not address our situation, these comments amplify and illustrate the more extensive and more detailed comments separately filed by the United States Conference of Catholic Bishops and by the Church Alliance, among others.

The proposed "religious employer" exemption does not cover our homes because the exemption extends only to group health plans offered by a nonprofit entity referred to in 26 U.S.C. § 6033(a)(3)(A)(i) or (iii).[4] Those provisions relate to the obligation to file an informational return and exempt "churches, their integrated auxiliaries, and conventions or associations of churches"[5] and "the exclusively religious activities of any religious order"[6] from this obligation. Each of our homes is a separate corporate entity that files an annual Form 990 for purposes of compliance with the tax code. Because each home is a "large employer" under the Patient Protection and Affordable Care Act and is not exempt from filing under the Code provision that currently defines the

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http://www.ncregister.com/site/article/if-god-fills-the-house-hewill-not-abandon-it;

[4] *See* Notice of Proposed Rulemaking, 78 Fed. Reg. 8456, 8461 (Feb. 6, 2013).

[5] 26 U.S.C. § 6033(a)(3)(A)(i).

[6] 26 U.S.C. § 6033(a)(3)(A)(iii).

scope of the proposed "religious employer" exemption, the group health plan offered by each home is not exempt from the HHS Mandate under the proposed exemption.

The fact that we have separately incorporated the homes in which we carry out our ministry to the elderly poor does not deprive our order's religious exercise of its religious nature. Saint Jeanne Jugan, our foundress and the first Little Sister of the Poor, began her ministry by bringing an elderly and infirm woman into her own apartment and caring for her there. Since 1839, we have continued this tradition with our homes, which now operate in one of the most highly regulated segments of care providers. We have always done our best to comply with all government regulations that apply to our homes and to the highest standards of nonprofit financial stewardship. The Form 990 is an important tool for financial accountability in our religious charitable work, but it makes no sense to use the requirement to file it as a disqualifier for the religious employer exemption.

The Little Sisters of the Poor should receive a religious exemption because of what we believe and do rather than the corporate forms through which we carry out our ministry. The Notice of Proposed Rulemaking observes that a church should not lose its exemption simply because it "maintains a soup kitchen that provides free meals to low-income individuals."[7] We agree. The same should hold true for our religious order. We should not be deprived of

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[7] 78 Fed. Reg. at 8461.

an exemption because we maintain homes to provide shelter and loving care to the elderly poor.

In our homes, the Little Sisters work with dedicated employees who are an integral part of our ministry. Each home employs approximately one hundred employees. Our employees understand our commitment to Catholic teaching and they understand that they are "an important extension of our hands in ministering to the elderly."[8] The health coverage that we offer has always explicitly excluded sterilization, contraception, and abortion from its coverage.[9] This longstanding policy has never been a matter of controversy in our homes.[10]

Our homes provide coverage for their employees through the Christian Brothers Employee Benefits Trust. The Trust is a self-funded church plan that provides health and welfare benefits to employees of Catholic employers nationwide.[11] As a church plan, the Trust provides benefits consistent with Catholic teachings and doctrines.[12] The Trustees of the Christian Brothers Employee Benefits Trust have

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[8] Little Sisters of the Poor, Employment, *at http://www.littlesistersofthepoor.org/placeforyou/employment.*

[9] *See* Statement of the Little Sisters of the Poor on the HHS Mandate March 1, 2012), *at http://www.littlesistersofthepoor.org/44-news-a-events/259-lsp-statement-on-hhs-preventive-services-mandate.*

[10] *Id.*

[11] *See* Christian Brothers Services Statement on Mandate Regarding Contraception, *at https://www.cbservices.org/newsroom/Statement-on-HHSMandate-Regarding-Contraception-CBS-2012.pdf.*

[12] *Id.*

contracted with Christian Brothers Services as a third-party administrator to administer and manage the Trust.[13] Christian Brothers Services is a nonprofit Catholic ministry that operates in accordance with Catholic teachings and doctrines.[14]

Although our homes qualify as "eligible organizations," the proposed accommodation in the Notice of Proposed Rulemaking does not address the situation that they face under the HHS Mandate. The Notice identifies three alternative ways in which the third-party administrator of a self-insured plan might be made responsible for arranging the objectionable coverage. Each of these alternatives presupposes that the third-party administrator itself has no religious objection to arranging that coverage. But Christian Brothers Services, as another Catholic organization, shares our commitment to Catholic teaching and also objects to the HHS Mandate.[15] Accordingly, the proposed accommodation does not offer us a path to compliance.

The federal government should not force us to counteract through the health benefits that we arrange for our employees the very same Gospel of

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[13] *Id.*

[14] *Id.*

[15] *See* Christian Brothers Services Statement on Mandate Regarding Contraception, *at https://www.cbservices.org/newsroom/Statement-on-HHS-Mandate-Regarding-Contraception-CBS-2012.pdf.* Christian Brothers Services is a member of the Church Alliance, which is filing a comment designed to address the impact of the HHS Mandate on self-funded church plans like the Christian Brothers Employee Benefits Trust.

Life that we attempt to live out in communion and solidarity with the needy elderly.[16] But under the proposed exemption and proposed accommodation, there is no way that we can comply with the HHS Mandate without taking affirmative steps to change our health coverage arrangements to ensure coverage of female sterilization and all FDA-approved contraceptives, including abortifacient drugs.

There are a number of ways for the federal government to accomplish its health-related goals while respecting religious freedom. The Little Sisters of the Poor support the expanded exemption advocated by the United States Conference of Catholic Bishops. We hope that it is unnecessary for us to join the scores of employers that have already resorted to the federal courts for protection. But we are only one group among hundreds who will be adversely affected by the HHS Mandate and we respectfully request the Departments to reach a just resolution that respects the religious freedom and conscience rights of all.

Sincerely,

/s/ Mother Loraine Marie Maguire, l.s.p.

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[16] *See* John Paul II, *Evangelium Vitae*, 25 Mar. 1995, n. 91 *available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html.* ("It is ... morally unacceptable to encourage, let alone impose, the use of methods such as contraception, sterilization and abortion in order to regulate births."); *id.* at n. 8 (condemning the "lack of solidarity towards society's weakest members-such as the elderly, the infirm, immigrants, [and] children").

Mother Loraine Marie Maguire. l.s.p.
Provincial Superior, Baltimore Province
Little Sisters of the Poor

/s/ Mother Margaret Regina Halloran, l.s.p.
Mother Margaret Regina Halloran, l.s.p.
Provincial Superior, Brooklyn Province
Little Sisters of the Poor

/s/ Mother Maria Christine Lynch, l.s.p
Mother Maria Christine Lynch, l.s.p.
Provincial Superior, Chicago Province
Little Sisters of Poor

Statement of the Little Sisters of the Poor on the HHS Mandate*

March 1, 2012

The Little Sisters of the Poor are an international Congregation of Catholic women religious serving 13,000 needy elderly persons of all faiths in 31 countries around the world. Thirty of our homes for the aged, accommodating over 2,500 low-income seniors, are located in the United States. In these homes we quietly spend our lives in the humble service of the elderly, accompanying them with love and respect until God calls them to Himself.

Long-term care is considered the most highly regulated segment of health care in America. The Little Sisters of the Poor have always done their best to comply with all the government regulations applicable to our homes. We are not prone to making statements on politics or public policy But at this moment in our country's history we cannot refrain from speaking out regarding the U.S. Department of Health and Human Services rule for "preventative services," and the "compromise" announced by President Obama regarding religious liberty.

We Little Sisters of the Poor stand with the Catholic Bishops of the United States, and leaders of many other religious communities, in strongly objecting to this mandate. We believe that it violates

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* This statement is available at *http://www.littlesistersofthepoor.org/44-news-a-events/259-lsp-statement-on-hhs-preventive-services-mandate*

the individual and collective religious liberty and freedom of conscience of the Little Sisters serving in this country. To quote Cardinal Timothy Dolan, president of the United States Conference of Catholic Bishops, "Surely it violates religious freedom to force religious ministries and citizens to buy health coverage to which they object as a matter of conscience and religious principle." Even the indirect subsidizing of such benefits, which would still be the case through the President's "compromise," is unconscionable to us.

As Little Sisters of the Poor we are not strangers to religious intolerance. Our foundress, Saint Jeanne Jugan, was born in the midst of the French Revolution and established our Congregation in its aftermath. In 1851 the first group of Little Sisters ventured beyond France to begin establishing homes for the elderly in Great Britain, where their selfless charity triumphed over the rampant anti-Catholic sentiments of the time.

In 1868 the first Little Sisters of the Poor to set foot on American soil were amazed at the warm welcome and generosity of the people of this country. For over 140 years Little Sisters have cared for the elderly poor, welcomed the collaboration of volunteers and benefactors from their local communities and employed lay staff and consultants to help in our mission – all without discriminating on the basis of race or religion. Nor have the Little Sisters of the Poor ever faced religious discrimination or persecution in this great nation.

The health insurance offered to employees of the Little Sisters of the Poor has always explicitly

excluded sterilization, contraception and abortion from its covered services. This longstanding policy has never been a matter of controversy in our homes. Policy revisions put in place as a result of the Patient Protection and Affordable Care Act clearly state that to the extent the Act would legally require our insurer to provide a particular benefit, they will do so, "unless providing the benefit would conflict with the doctrine or tenets of the Roman Catholic Church."

Because the Little Sisters of the Poor cannot in conscience directly provide or collaborate in the provision of services that conflict with Church teaching, we find ourselves in the irreconcilable situation of being forced to either stop serving and employing people of all faiths in our ministry – so that we will fall under the narrow exemption – or to stop providing health care coverage to our employees. Either path threatens to end our service to the elderly in America. The Little Sisters are fervently praying that this issue will be resolved before we are forced to take concrete action in response to this unjust mandate.

Beyond the immediate issues related to sterilization, contraception and abortifacients, we are deeply concerned about the erosion of religious liberty and freedom of conscience which the HHS mandate signals and the impact this could have on our health care ministry. We fear that the successful implementation of this rule could set a precedent for further intrusion of government into health care, with an increasingly broad array of medical treatments and procedures – preventive or otherwise – falling under federal mandates. If the federal government succeeds in enforcing this rule, what is to

stop it from rationing health care to seniors or including euthanizing procedures on the list of required "preventive services" as a way of eliminating the costs associated with caring for our aging population? Would health care providers like the Little Sisters of the Poor then be forced to cooperate in such practices?

In 1991 Mother Marie Antoinette de la Trinité, then Superior General of the Little Sisters of the Poor, took a public stand and made the Congregation's voice heard against just such measures when the European Parliament was debating euthanasia. We now find ourselves at a similar crossroads in our nation's history. We wish to affirm that the HHS mandate is an unjust and dangerous infringement upon the natural and Constitutional rights of Americans and that the only just solution is to rescind it. The Little Sisters of the Poor call upon Congress and the Executive Branch to reverse this decision as soon as possible and we pledge our prayers and sacrifices for the true good of our beloved country.

Update on Our Position on the HHS Mandate†

December 23, 2012

In the past week the Little Sisters of the Poor have received quite a bit of online media coverage, and it hasn't even been related to football! Comments about the impact of the HHS Mandate on our mission made by a Little Sister during a recent parish visit set off a virtual avalanche of stories and blogs. In the midst of last minute Christmas preparations, the HHS Contraceptive Mandate, part of Obamacare, suddenly took center stage.

For many of the journalists who have contacted us, the burning question has been, **"Will the Little Sisters really have to leave the United States due to the HHS Mandate?"** Driving this question are the considerable fines to be imposed on those who refuse to comply with the Mandate based on religious or conscience objection claims.

There are a few points we'd like to clarify at this time:

- Because of the one-year exemption for religious groups, the issue won't affect us directly until January 1, 2014.
- Some people have asked why a mandate involving contraception affects us at all, since we are a religious congregation caring for the elderly. It affects us primarily because we offer health

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† This statement is available at *http://www.littlesistersofthepoor.org/component/content/article/44-news-a-events/303-update-on-our-position-on-the-hhs-mandate.*

insurance to our many employees across the country.

- At this time the fine for those who stop providing health insurance to their employees is $2,000 per employee. The fine for those who provide insurance without the objectionable services is $100 per day per employee.

Either of these fines would present serious financial burdens for each of our homes across the United States, since we already rely on donations for 40–60% of our operating expenses.

We would like to make it clear that despite these seemingly insurmountable difficulties, **we have no plans to close any of our homes, nor to leave the United States, as a result of the HHS Mandate.** Our Congregation was founded in France in the wake of the French Revolution. Throughout the years, Little Sisters in numerous countries have remained with the elderly through two World Wars, national and regional conflicts, natural disasters and various forms of social unrest. Although, as we have previously stated, we have left several countries because of religious intolerance, we have done so only when forced to leave.

We would like to assure those we serve and their families, as well as our employees, friends and supporters, that we have absolutely no plans to leave the United States and cannot envision doing so **unless given no other alternative.**

We ask all those reading this to continue to pray with us for a just resolution to this issue – a solution that will respect the religious freedom and conscience rights of all those who disagree with this Mandate,

regardless of their faith community. We are only one group among hundreds who will be adversely affected by the HHS Mandate.

Like our foundress, Saint Jeanne Jugan, we put our trust in God's Providence and say, with her, *"If God is with us, it will be accomplished.... If God fills the house, he will not abandon it."*

Finally, we wish everyone a Blessed Christmas!

LITTLE SISTERS OF THE POOR MISSION, VISION AND VALUES

2012

The Little Sisters of the Poor are an international congregation of Roman Catholic women religious founded in 1839 by Saint Jeanne Jugan. Together with a diverse network of collaborators, we serve the elderly poor in over 30 countries around the world.

Continuing the work of Saint Jeanne Jugan, our **MISSION** is to offer the neediest elderly of every race and religion a home where they will be welcomed as Christ, cared for as family and accompanied with dignity until God calls them to himself.

Our **VISION** is to contribute to the Culture of Life by nurturing communities where each person is valued, the solidarity of the human family and the wisdom of age are celebrated, and the compassionate love of Christ is shared with all.

Our **VALUES**

REVERENCE for the sacredness of human life and for the uniqueness of each person, especially those who are poorest and/or weakest. This is reflected in care that is holistic and person-centered.

FAMILY SPIRIT: a spirit of joyful hospitality embracing all with open arms, hearts and minds; fostering participation in the life of the home and rejecting all forms of discrimination.

HUMBLE SERVICE: the desire to raise others up and to put their needs before our own; an appreciation of simple, everyday tasks and

experiences and humble means in accomplishing our work.

COMPASSION: empathy for sharing the weaknesses and sufferings of others; eagerness to relieve pain in all its forms and to make the elderly happy.

STEWARDSHIP: the recognition that life and all other goods are gifts from God and should therefore be used responsibly for the good of all; trust in God's Providence and the generosity of others to provide for our needs; just compensation for our collaborators; a spirit of gratitude and sharing.

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, a Colorado non-profit corporation, *et al.*, *Plaintiffs,* v. KATHLEEN SEBELIUS, *et al.* *Defendants.*	Civil No. __ **DECLARATION OF ADÈLE KEIM**

I, Adele A. Keim, hereby affirm under penalty of perjury as follows:

1. I represent the Little Sisters of the Poor in the above-captioned matter. I have personal knowledge of everything testified to in this declaration.

2. As a part of my duties representing clients in a similar matter, I reviewed the Health and Human Services Department's "Keeping the Health Plan You Have: The Affordable Care Act and 'Grandfathered' Health Plans" document ("Grandfathering Factsheet").

3. The Grandfathering Factsheet was available at http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-healthplan-you-have-grandfathered. html ("healthcare.gov website link").

4. Sometime since I last reviewed the Grandfathering Factsheet via the healthcare.gov website link and today, the Grandfathering Factsheet was removed from the www.healthcare.gov website.

5. However, the Grandfathering Factsheet is still available at the following link via an internet archive website: http://web.archive.org/web/20130620171510/http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html (last visited September 23, 2013).

6. The internet archive website states that it last archived a copy of the Grandfathering Document from the healthcare.gov website link on June 20, 2013.

7. I have reviewed the copy of the Grandfathering Factsheet from the internet archive website and affirm that it is a true and complete copy of the Grandfathering Factsheet that was previously posted at the healthcare.gov website link.

8. Attached hereto as Exhibit F is a true and complete copy of the Grandfathering Factsheet.

Executed this 23rd day of September, 2013, in Washington, D.C.

/s/
Adèle A. Keim

HealthCare.gov

Newsroom

KEEPING THE HEALTH PLAN YOU HAVE: THE AFFORDABLE CARE ACT AND "GRANDFATHERED" HEALTH PLANS

The Affordable Care Act gives American families and businesses more control over their health care by providing greater benefits and protections for family members and employees. It also provides the stability, and also the flexibility, that families and businesses need to make the choices that work best for them.

During the health reform debate, President Obama made clear to Americans that "if you like your health plan, you can keep it." He emphasized that there is nothing in the new law that would force them to change plans or doctors. Today, the Departments of Health and Human Services, Labor, and Treasury issued a new regulation for health coverage in place on March 23, 2010 that makes good on that promise by:

- Protecting the ability of individuals and businesses to keep their current plan;
- Providing important consumer protections that give Americans – rather than insurance companies – control over their own health care.
- Providing stability and flexibility to insurers and businesses that offer insurance coverage as the nation transitions to a more competitive marketplace in 2014 where businesses and consumers will have more affordable choices through Exchanges.

The rule announced today preserves the ability of the American people to keep their current plan if they like it, while providing new benefits, by minimizing market disruption and putting us on a glide path toward the competitive, patient-centered market of the future. While it requires all health plans to provide important new benefits to consumers, it allows plans that existed on March 23, 2010 to innovate and contain costs by allowing insurers and employers to make routine changes without losing grandfather status. Plans will lose their "grandfather" status if they choose to significantly cut benefits or increase out-of-pocket spending for consumers – and consumers in plans that make such changes will gain new consumer protections.

Most of the 133 million Americans with employer-sponsored health insurance through large employers will maintain the coverage they have today. Large employer-based plans already offer most of the comprehensive benefits and consumer protections that the Affordable Care Act will provide to all Americans this year – such as preventing lifetime limits on coverage – and in the future.

People who work in smaller firms – which change insurers more often due to annual fluctuations in premiums – and people who purchase their own insurance in the individual market – a group that frequently changes coverage – will enjoy all of the benefits of the Affordable Care Act when they choose a new plan. These Americans also will benefit from the new competitive Exchanges that will be established in 2014 to offer individuals and workers in small businesses with greater choice of plans at

more affordable rates – the same choice of plans as members of Congress.

Protecting Patients' Rights in All Plans

All health plans – whether or not they are grandfathered plans – must provide certain benefits to their customers for plan years starting on or after September 23, 2010 including:

- No lifetime limits on coverage for all plans;
- No rescissions of coverage when people get sick and have previously made an unintentional mistake on their application;
- Extension of parents' coverage to young adults under 26 years old; and the

For the vast majority of Americans who get their health insurance through employers, additional benefits will be offered, irrespective of whether their plan is grandfathered, including:

- No coverage exclusions for children with pre-existing conditions; and
- No "restricted" annual limits (e.g., annual dollar-amount limits on coverage below standards to be set in future regulations).

Additional Consumer Protections Apply to Non-Grandfathered Plans

Grandfathered health plans will be able to make routine changes to their policies and maintain their status. These routine changes include cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, voluntarily adopting new consumer protections under the new law, or making changes to

comply with State or other Federal laws. Premium changes are not taken into account when determining whether or not a plan is grandfathered.

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to consumers. If a plan loses its grandfathered status, then consumers in these plans will gain additional new benefits including:

- Coverage of recommended prevention services with no cost sharing; and
- Patient protections such as guaranteed access to OB-GYNs and pediatricians.

Under the Affordable Care Act, these requirements are applicable to all new plans, and existing plans that choose to make the following changes that would cause them to lose their grandfathered status.

Compared to their polices in effect on March 23, 2010, grandfathered plans:

- **Cannot Significantly Cut or Reduce Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Cannot Raise Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Cannot Significantly Raise Co-Payment Charges.** Frequently, plans require patients to pay a fixed-dollar amount for doctor's office

visits and other services. Compared with the copayments in effect on March 23, 2010, grandfathered plans will be able to increase those co-pays by no more than the greater of $5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raises its copayment from $30 to $50 over the next 2 years, it will lose its grandfathered status.

- **Cannot Significantly Raise Deductibles.** Many plans require patients to pay the first bills they receive each year (for example, the first $500, $1,000, or $1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points. In recent years, medical costs have risen an average of 4-to-5% so this formula would allow deductibles to go up, for example, by 19-20% between 2010 and 2011, or by 23-25% between 2010 and 2012. For a family with a $1,000 annual deductible, this would mean if they had a hike of $190 or $200 from 2010 to 2011, their plan could then increase the deductible again by another $50 the following year.
- **Cannot Significantly Lower Employer Contributions.** Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer

pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).

- **Cannot Add or Tighten an Annual Limit on What the Insurer Pays.** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).
- **May Change Insurance Companies.** An employer with a group health plan can switch plan administrators as well as buy insurance from a different insurance company without losing grandfathered status—provided the plan does not make any of the above six changes to its cost or benefits structure.*

* Previously, one way an employer group health plan could lose its grandfather status was to change issuers—switch from one insurance company to another. The original regulation allowed only self-funded plans to change third-party administrators without necessarily losing their grandfathered plan status. On November 15, the regulation was amended to allow all group health plans to switch insurance companies and shop for the same coverage at a lower cost while maintaining their grandfathered

status, as long as the structure of the coverage doesn't violate one of the other rules for maintaining grandfathered plan status.

Protecting Against Abuse of Grandfathered Health Plan Status

To prevent health plans from using the grandfather rule to avoid providing important consumer protections, the regulation provides for:

- Promoting transparency by requiring a plan to disclose to consumers every time it distributes materials whether the plan believes that it is a grandfathered plan and therefore is not subject to some of the additional consumer protections of the Affordable Care Act. This allows consumers to understand the benefits of staying in a grandfathered plan or switching to a new plan. The plan must also provide contact information for enrollees to have their questions and complaints addressed;
- Revoking a plan's grandfathered status if it forces consumers to switch to another grandfathered plan that, compared to the current plan, has less benefits or higher cost sharing as a means of avoiding new consumer protections; or
- Revoking a plan's grandfathered status if it is bought by or merges with another plan simply to avoid complying with the law.

Projected Impact on Consumers and Plans

Large Employer Plans

The 133 million Americans with employer-sponsored health insurance through large employers (100 or

more workers)—who make up the vast majority of those with private health insurance today—will not see major changes to their coverage as a result of this regulation. This regulation affirms that most of these plans will remain grandfathered—more than three-quarters of firms in 2011—based on the way they changed cost sharing from 2008-2009. Most of these plans already offer the patient protections applied to grandfathered plans such as no pre-existing condition exclusions for children and no rescissions of coverage when a person gets sick. In addition, they are likely to already give their workers and families protections like a choice of OB-GYN and pediatrician and access to emergency rooms in other states without prior authorization. Based on past patterns of behavior, it is expected that large employers will continue to make adjustments to the health plans they offer from year to year so that, by the time the health insurance Exchanges are established in 2014, fewer—but still most—large employer plans will have grandfather status. However, the assumed market changes depend on the choices large employers make in the future.

Small Business Plans

The roughly 43 million people insured through small businesses will likely transition from their current plan to one with the new protections over the next few years. Small plans tend to make substantial changes to cost sharing, employer contributions, and health insurance issuers more frequently than large plans. As such, we estimate that 70% of plans will be grandfathered in the first year, but depending on the choices these employers make, this could drop to about one-third over several years. To help sustain

small business coverage, the Affordable Care Act also includes a tax credit for up to 35% of their premium contributions.

Individual Health Market

The 17 million people who are covered in the individual health insurance market, where switching of plans and substantial changes in coverage are common, will receive the new protections of the Affordable Care Act sooner rather than later. Roughly 40 percent to two-thirds of people in individual market policies change plans within a year. Given this "chum," the transition for the 17 million people in this market will be swift. In the short run, individuals whose plan changes and is no longer grandfathered will gain access to free preventive services, protections against restricted annual limits, and patient protections such as improved access to emergency rooms. These Americans also will benefit from the Health Insurance Exchanges that will be established in 2014 to offer individuals and workers in small businesses a much greater choice of plans at more affordable rates.

People In Special Types of Health Plans

Fully-insured health plans subject to collective bargaining agreements will be able to maintain their grandfathered status until their agreement terminates. After that point, they are subject to the same rules as other health plans; in other words, they will lose their grandfathered status if they make any of the substantial changes described above. Retiree-only and "excepted health plans" such as dental plans, long-term care insurance, or Medigap,

are exempt from the Affordable Care Act insurance reforms.

Projections of Employer Plans Remaining Grandfathered, 2011-2013

There is considerable uncertainty about what choices employers will make over the next few years as the market prepares for the establishment of the competitive Exchanges and other market reforms such as new consumer protections, middle-class tax credits and other steps to expand affordability and choice for millions more Americans. This rule estimates the likely decisions of employers based on assumptions and extrapolations of recent market behavior, including the decisions by employers to change their health plans in 2008 and 2009. The table below depicts the results of this analysis:

Type of Plan	Enrollees	Employer Plans Remaining Grandfathered		Explanation
		2011	2013	
Allowable Percent Change in Co-Payments from 2010		Medical inflation * (4%) + 15% = 19%	Medical inflation * (4%[3] + 12%) + 15% = 27%	Deductibles, copayments can increase faster than medical inflation over time
Large Employer	133 million	Low: 87% remain grandfathered	Low: 66% remain grandfathered	Large plans are more stable and often self-insured.

		Mid-range: 82% remain grand-fathered High: 71% remain grand-fathered	Mid-range: 55% remain grand-fathered High: 36% remain grand-fathered	Regulation permits plans to make routine changes needed to keep premium growth in check.
Small Employer	43 million	Low: 80% remain grand-fathered Mid-range: 70% remain grand-fathered High: 58% remain grand-fathered	Low: 51% remain grand-fathered Mid-range: 34% remain grand-fathered High: 20% remain grand-fathered	Small businesses typically buy commercial insurance and frequently make changes in insurers and coverage. Limited purchasing power and high overhead often force a

trade-off between dramatic changes in benefits and cost sharing and affordable premiums.

* Assumes medical inflation at 4%

The "low" percentage is based on the mid-range percentages plus plans that could stay grandfathered with small premium changes.

The "mid-range" percentage is based on assumptions of the number of plans that would lose their grandfathered status if they made changes consistent with the changes that they made in 2008 and 2009 that would not lead to premium increases.

The "high" percentage assumes that some plans would not be able to make the adjustments to employer premium contribution they would need to keep premiums the same while keeping their other cost-sharing parameters within the grandfathering rules. The estimates in this case assume these plans will choose to relinquish their grandfathered status instead.

Choices in 2014 and Subsequent Years

In 2014, small businesses and individuals who purchase insurance on their own will gain access to the competitive market Exchanges. These Exchanges will offer individuals and workers in small businesses with a much greater choice of plans at more affordable rates—the same choice as members of

Congress. In fact, the Congressional Budget Office (CBO) has estimated that, on an apples-to-apples basis, premiums will be 14-20 percent lower than they would be under current law in 2016 due to competition, lower insurance overhead, and increased pooling and purchasing power. Small businesses also will have more affordable options. CBO has estimated that a family policy for small businesses would be available in the Exchanges at a premium that is $4,000 lower than under current law in 2016.

These reduced premiums do not take into account the tax credits available to small businesses and middle-class families to help make insurance affordable. These additional new choices may further lower the likelihood that small businesses workers will remain in grandfathered health plans. Consumers insured through large employers are more likely to remain in grandfathered plans in 2014 and beyond.

Read the Press Release at: http://www.hhs.gov/news/press/2010pres/06/20100614e.html.

Read the Questions and Answers on the Regulation at http://www.healthreform.gov/about/grandfathering.html.

You can view the Regulation at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2010_register&docid=DOCID:fr17jn10-25.pdf.

Posted: June 14, 2010

CMS.gov

CENTERS FOR MEDICARE & MEDICAID SERVICES

The Center for Consumer Information & Insurance Oversight

Amendment to Regulation on "Grandfathered" Health Plans under the Affordable Care Act

On June 17, 2010, the Departments of Health and Human Services, Labor, and the Treasury (the Departments) issued the "grandfather" regulation which, by addressing how health plans can retain a "grandfathered" exemption from certain new requirements, helps protect Americans' ability to keep their current plan if they like it. At the same time, Americans in grandfathered plans will receive many of the added benefits that the new law provides. The regulation also minimizes market disruption and helps put us on a path toward the competitive, patient-centered market of the future.

The grandfather regulation includes a number of rules for determining when changes to a health plan cause the plan to lose its grandfathered status. For example, plans could lose their grandfathered status if they choose to make certain significant changes that reduce benefits or increase costs to consumers. This amendment modifies one aspect of the original regulation.

Previously, one of the ways an employer group health plan could lose its grandfathered status was if the employer changed issuers – switching from one insurance company to another. The original regulation only allowed self-funded plans to change third-party administrators without necessarily losing

their grandfathered plan status. Today's amendment allows all group health plans to switch insurance companies and shop for the same coverage at a lower cost while maintaining their grandfathered status, so long as the structure of the coverage doesn't violate one of the other rules for maintaining grandfathered plan status.

What does this mean for you?

The purpose of the grandfather regulation is to help people keep existing health plans that are working for them. This amendment furthers that goal by allowing employers to offer the same level of coverage through a new issuer and remain grandfathered, as long as the change in issuer does not result in significant cost increases, a reduction in benefits, or other changes described in the original grandfather rule.

Why did HHS, Labor and Treasury make this change?

The Departments received many comments on the provision in the original grandfather rule stating that a group health plan would relinquish grandfathered status if it changed issuers or policies. This change was made in response to those comments for the following reasons:

1. There are circumstances where a group health plan may need to make administrative changes that don't affect the benefits or costs of a plan. For example, an insurer may stop offering coverage in a market. Or a company may change hands. In those cases, the employer can maintain grandfathered status for their employee plan under this amendment.

2. Comments expressed concern that the original provision could have the inadvertent effect of interfering with health care cost containment. If an employer has to stay with the same insurance company to keep the benefits of having a grandfathered plan, the insurance company has undue and unfair leverage in negotiating the price of coverage renewals. Allowing employers to shop around can help keep costs down while ensuring individuals can keep the coverage they have.
3. Some employers buy coverage from insurance companies; others "self-insure," meaning that they pay claims themselves but usually hire a third-party administrator (TPA) to handle the paperwork. Usually only large companies can self-insure. Before this amendment, self-insured plans could change the company hired to handle the paperwork without losing grandfathered status as long as the benefits and costs of the plan stayed the same, while an employer that just changed insurance companies while maintaining the same benefits under their plan could not do so. Under this amendment, all employers have the flexibility to keep their grandfathered plan but change insurance company or third-party administrator.

What types of plans does this affect?

The amendment affects insured *group* health plans.

A change of issuers in the *individual market* would still result in the loss of grandfathered status.

How many plans will this affect?

The Departments expect that this amendment will result in a small increase in the number of plans

retaining their grandfathered status relative to the estimates made in the grandfathering regulation.

The Departments did not produce a range of estimates for the number of affected entities given considerable uncertainty about the response to this amendment.

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7500 Security Boulevard,
Baltimore, MD 21244

Employer Firms, Establishments, Employment, and Annual Payroll
Small Firm Size Classes, 2010

Employment size of firm	Firms	Establishments	Employment	Annual Payroll ($1,000)
Total	5,734,538	7,396,628	111,970,095	4,940,983,369
0-4*	3,575,240	3,582,826	5,926,452	226,541,056
5-9	968,075	982,019	6,358,931	212,039,611
10-14	407,404	425,641	4,767,288	161,083,478
15-19	209,685	227,021	3,521,097	122,162,995
20-24	120,787	137,465	2,635,563	96,540,782
25-29	80,526	95,098	2,161,156	80,793,423
30-34	58,557	72,882	1,865,736	70,290,875
35-39	42,860	56,323	1,580,717	60,513,154
40-44	33,697	46,334	1,410,309	54,678,985
45-49	26,529	38,467	1,242,981	48,848,658
50-74	76,223	125,214	4,582,829	180,827,923
75-99	35,946	76,603	3,075,081	126,567,451
100-149	35,590	97,513	4,312,353	173,913,850
150-199	18,195	66,780	3,139,298	126,714,706

200-299	16,184	87,806	3,914,153	165,665,730
300-399	7,449	56,843	2,567,426	113,907,319
400-499	4,355	45,371	1,935,310	85,443,024
500-749	5,681	75,291	3,452,042	154,084,058
750-999	2,808	50,248	2,420,696	111,747,776
1,000-1,499	2,801	64,098	3,410,858	159,335,433
1,500-1,999	1,489	46,947	2,577,221	125,317,927
2,000-2,499	872	39,603	1,947,272	93,586,405
2,500-4,999	1,761	124,386	6,165,819	319,664,717
5,000+	1,824	775,849	36,999,507	1,870,714,033
<20	5,160,404	5,217,507	20,573,768	721,827,140
<50	5,523,360	5,664,076	31,470,230	1,133,493,017
<100	5,635,529	5,865,893	39,128,140	1,440,888,391
<500	5,717,302	6,220,206	54,996,680	2,106,533,020

* Employment is measured in March, thus some firms (start-ups after March, closures before March, and seasonal firms) will have zero employment and some annual payroll. Excludes farms.

Source: U.S. Small Business Administration, Office of Advocacy. based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, a Colorado non-profit corporation, *et al.*, *Plaintiffs*, v. KATHLEEN SEBELIUS, *et al.* *Defendants.*	Civil No. 1:13-cv-02611 **DECLARATION OF MOTHER LORAINE MARIE CLARE MAGUIRE**

I, Mother Loraine Marie Claire Maguire, hereby declare as follows:

1. I am the Provincial Superior of the Province of Baltimore for the Little Sisters of the Poor.

2. I have been a Little Sister for 29 years, and have served in leadership positions in the order for 12 years.

3. I am also a registered nurse and licensed nursing home administrator. I have a B.A. from St. Joseph's College of Maine.

4. I make this declaration based on my personal knowledge and experience of the Little Sisters, our organization, our ministry, and our religious beliefs and practices. My statements about the history of the Little Sisters, the scope of our ministry

internationally, and the founding dates of various homes are drawn from organizational and historical documents that I believe to be correct.

I. History, Organization, and Structure of the Little Sisters of the Poor

5. The Little Sisters of the Poor is an international Roman Catholic Congregation of Sisters that has provided loving care to needy elderly persons of any race, sex, or religion for 174 years.

6. The Little Sisters of the Poor were founded in France, in the winter of 1839, when St. Jeanne Jugan carried a blind elderly woman off the streets and into her home and laid the woman in her own bed. Over time, other women joined St. Jeanne in a religious ministry designed to protect and care for the elderly poor.

7 By the time St. Jeanne died forty years later, the Little Sisters of the Poor had established homes in eight countries, including the United States, where the first home was founded in 1868 in Brooklyn, New York.

8. Today, there are Little Sisters homes in over thirty countries around the world serving over 13,000 poor elderly people.

9. The Little Sisters of the Poor have founded and operate thirty homes in the United States, which are located in nineteen states and the District of Columbia. These homes are hosted by over 300 Little Sisters of various nationalities.

10. In the United States, our homes are divided into three provinces: the Baltimore Province, the Brooklyn Province, and the Chicago Province. The

Superiors of the various homes in each province are under the authority of the province's Provincial Superior. All of the provinces are under the authority of the Superior General of the Little Sisters of the Poor, who resides in France.

11. Important policy decisions that will affect the Little Sisters of the Poor throughout the United States are typically made by the three Provincial Superiors, subject to the approval of the Superior General.

12. All Little Sisters homes share the same fidelity to the same Catholic beliefs. Every home is operated under the control of the Little Sisters, and every Little Sister takes a vow of obedience to God, which assumes obedience to the Pope, the Church's teaching, and the authority of the Church in her hierarchy.

13. While Catholic and committed to following Church teaching, the Little Sisters' homes are not under the civil legal ownership and control of the dioceses in which they are located. Instead, the Little Sisters of the Poor own and control the homes ourselves, through local corporations that are entirely within the civil legal control of the Little Sisters.

14. While Catholic and committed to following Church teaching, the Little Sisters' homes are not directly funded by the dioceses in which we are located. Instead, we take responsibility for funding our own operations. For most homes, about half of the budget comes from voluntary gifts, largely in response to the begging for funds and gifts in kind that the Little Sisters do to support our ministry.

About half of the budget comes from the federal and state government payments we receive for the care we provide to the needy elderly (Medicaid and Medicare), as well as the residents' meager pensions.

II. The Named Plaintiffs: Little Sisters of Baltimore and Little Sisters of Denver

15. The two Little Sisters of the Poor homes that are the named Plaintiffs in this suit are the Little Sisters of the Poor Home for the Aged, Denver, Colorado, and the Little Sisters of the Poor, Baltimore, Inc.

16. Little Sisters of the Poor, Baltimore, Inc. ("Little Sisters of Baltimore"), is a Maryland non-profit corporation that qualifies as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 ("the Code"). The Baltimore Home is one of the ten homes that are under my direct authority as Provincial Superior of the Baltimore Province.

17 Little Sisters of Baltimore currently employs approximately 54 full-time employees.

18. The Little Sisters of the Poor Home for the Aged, Denver, Colorado ("Little Sisters of Denver"), is a Colorado non-profit corporation that qualifies as a tax-exempt organization under section 501(c)(3) of the Code. The Little Sisters of Denver Home is under the direct authority of the Provincial Superior of the Chicago Province. With the other two Provincial Superiors and the Superior General, I make important policy decisions affecting all of the U.S. homes, including the Denver home.

19. Little Sisters of Denver currently employs approximately 67 full-time employees.

20. Both Little Sisters of Baltimore and Little Sisters of Denver have adopted the Christian Brothers Employee Benefit Trust (the "Christian Brothers Trust") to provide medical benefits coverage for their employees.

21. It is my understanding that Christian Brothers Trust is a Catholic entity designed to serve the Catholic Church and related faith-based entities. It is my understanding that, like the Little Sisters, the Christian Brothers Trust operates in a manner consistent with our mutual Catholic beliefs. One of the reasons the Little Sisters chose to use the Christian Brothers Trust for our health benefits is because it shares and is administered in accordance with our religious beliefs and provide benefits accordingly.

III. Religious Beliefs and Commitments of the Little Sisters of the Poor

22. Jesus taught that "in so far as you did it to the least of these brothers of mine, you did it to me." *See* Matthew 25:34. This teaching is a fundamental part of who the Little Sisters are. St. Jeanne urged her fellow Little Sisters, "Never forget that the poor are Our Lord; in caring for the poor say to yourself: This is for my Jesus—what a great grace!" Thus, each Little Sister makes a vow of Hospitality, through which she promises to care for the aged as if they were Christ himself.

23. As Little Sisters, we strive to witness to the value of the elderly by believing in their inviolable dignity, by recognizing their unique contributions to the Church and society, and by involving them in the

activities of our Homes to develop their human potential.

24. Caring for the dying is the summit of the Little Sisters' service to the elderly poor. The Little Sisters maintain a constant presence with those who have entered the dying process and their families. We try to relieve their sufferings as much as possible, which includes giving emotional and prayerful support. Our provision of spiritual support is always consistent with the faith of the person we are serving; we do not force religious observance on anyone.

25. Because the Little Sisters care for those who are weak and dying, we strive to emphasize our respect for the uniqueness and dignity of each elderly person as they reach the end of their life. We offer this respect for two reasons. First, to treat the individual with the dignity they are due as a person loved and created by God. Second, to convey a public witness of respect for life, in the hope that we can help build a Culture of Life in our society. *See* ECF No. 1-6, Exhibit E, which is a true and accurate copy of the Little Sisters of the Poor *Mission, Vision, and Values* (describing the Little Sisters' "VISION" as building a "Culture of Life by nurturing communities where each person is valued, the solidarity of the human family and the wisdom of age are celebrated, and the compassionate love of Christ is shared with all," and its "VALUES" as including "REVERENCE for the sacredness of human life and for the uniqueness of each person, especially those who are the poorest and/or weakest").

26. This commitment is also reflected in our vow to treat each person in our care with the same respect and compassion as if he or she was Jesus Christ.

27. We care for the elderly poor of all races and religions, or of no religion at all. We do not care for people because they are Catholic, but because we are Catholic.

28. We also hire employees of all races and religions, or of no religion at all. Because staff members are an important extension of our ministry to the elderly, they must support the Little Sisters' mission by welcoming the elderly poor, helping to make them happy and caring for them with respect or dignity until death. Failure to do so is one of the relatively few explicit grounds for staff dismissal.

29. The Little Sisters have also taken a vow of obedience to God, which assumes obedience to the Pope. We carefully follow all of his guidance, and obey all the decisions of the Church. Thus, we develop all of our programs, policies, and procedures in accord with the teachings of the Catholic Church, including its ethical teachings on the inviolable dignity of every human life.

30. These teachings include Catholic religious teachings about abortion, contraception, sterilization, and cooperation with acts that are intrinsically immoral.

31. Authoritative Catholic teachings are located in sacred Scripture and sacred tradition, and are set forth and specified in the Catechism of the Catholic Church, documents of ecumenical councils (such as the Second Vatican Council), papal encyclicals, directives issued by bishops' conferences, and other

teaching documents of the Church. *See generally* Catechism of the Catholic Church Nos. 888-892 (describing the teaching office of the Church); *Dei Verbum* No. 10 (describing how "[s]acred tradition and Sacred Scripture form one sacred deposit of the word of God, committed to the Church," and explaining that "the task of authentically interpreting the word of God, whether written or handed on, has been entrusted exclusively to the teaching office of the Church, whose authority is exercised in the name of Jesus Christ").

32. Sections 2270 and 2271 of the Catechism of the Catholic Church (1994) affirm that life begins at conception, that directly intending to take innocent human life is gravely immoral. Thus a post-conception contraceptive is an abortifacient and "gravely contrary to moral law." *See also* section 2274 ("Since it must be treated from conception as a person, the embryo must be defended in its integrity, cared for, and healed, as far as possible, like any other human being.")

33. The Catholic Church also teaches that contraception and sterilization are intrinsic evils. *Id.* at Section 2370.

34. The Church teaches that programs of "economic assistance aimed at financing campaigns of sterilization and contraception" are "affronts to the dignity of the person and the family." *See* Section 234 of the Compendium of the Social Doctrine of the Church (2004).

35. In a landmark encyclical, Blessed Pope John Paul II made clear that Catholics may never "encourage" the use of "contraception, sterilization,

and abortion[.]" *See* Section 91 of *Evangelium Vitae* (1995).

36. Similarly, the United States Conference of Catholic Bishops ("USCCB") has issued a series of directives to inform the provision of health services in every U.S. Catholic health institution. These directives prohibit providing, promoting, or condoning abortions, abortion-inducing drugs, contraceptives, and sterilization. Exhibit L, USCCB Directives for Catholic Health Care Services at Nos. 45, 52, & 53.

37. The directives specifically warn against partnering with other entities in a manner that could involve Catholic health care services in the provision of such "intrinsically immoral" services. *Id.* at Nos. 67-72.

38. Rather, the USCCB Directives instruct us to "distinguish [ourselves] by service to and *advocacy for*" people who are "at the margins of society" and "particularly vulnerable to discrimination," such as "the poor, the uninsured and underinsured; children and the *unborn*; single parents; the elderly; those with incurable diseases and chemical dependencies; racial minorities; immigrants and refugees." *Id.* at No. 3 (emphasis added).

39. The Little Sisters are particularly concerned about the possibility that our conduct may lead others to do evil, or think that the Little Sisters condone evil. *See* Catechism No. 2284, 86 (instructing Catholic institutions to avoid "scandal" and defining "scandal" as "an attitude or behavior which leads another to do evil"; scandal can be caused "by laws or institutions"). The Little Sisters

beg for funds and goods at Catholic parishes and elsewhere to support our ministry. Thus, participating in the provision of health benefits that violate Catholic teaching poses a grave risk for the Little Sisters as they interact with Catholic faithful and others who share our beliefs.

40. Even before entering the Little Sisters of the Poor, I was familiar with the Catholic religious requirement to avoid facilitating abortion, contraception, and sterilization. Early in my career as a nurse, I was required as part of my job to facilitate the signing of consent forms for abortions being performed at the hospital. The documents were being processed in connection with abortion procedures being performed at the hospital. Although I was not being required to pay for or to physically perform or assist in performing the abortions, my Catholic religious beliefs compelled me to ask my employer to exempt me from this task. Even handling the forms that would facilitate the abortions was contrary to my religious beliefs.

41. The Little Sisters are also guided by Catholic teaching to provide for the health and welfare of our employees and their families by providing them with adequate health benefits. "In return for their labor, workers have a right to wages and other benefits sufficient to sustain life in dignity." *Economic Justice For All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, ¶ 103, available at *http://www.usccb.org/uDload/economic justice for all.pdf* (last visited September 28, 2013) ("The provision of wages and other benefits sufficient to support a family in dignity is a basic necessity to

prevent this exploitation of workers. The dignity of workers also requires adequate health care ").

42. The Little Sisters believe that the health plans that each home offers should be consistent with Catholic teaching. Historically, the Provincial Superiors have sought to achieve that goal by having our homes either obtain health benefits coverage through a Catholic organization like the Christian Brothers or join the coverage provided by the local diocese.

43. The Little Sisters consider these religious ethical teachings binding on how we carry out our religious ministry of caring for the elderly poor.

IV The Impact of the Mandate on the Little Sisters

44. The HHS contraceptive mandate (the "Mandate") places an enormous pressure on the Little Sisters to violate our religious beliefs.

45. Our vow of hospitality, which asks us to treat each person in our care as if he or she were Christ himself, commits us just as much to respecting the dignity of human life at its beginning as at its end. We can no more participate in the provision of insurance coverage for contraception, abortion, and sterilization than we could participate in insurance coverage for euthanasia or assisted suicide.

46. Because of the religious beliefs set forth above, the Little Sisters cannot participate in the government's program to promote and facilitate access to the use of sterilization, contraceptives, and abortion-inducing drugs and devices.

47. Because of the religious beliefs set forth above, we cannot provide health benefits to our employees that will include access to sterilization, contraception, and abortion-inducing drugs and devices.

48. Because of the religious beliefs set forth above, we cannot designate any third party to provide our employees with access to sterilization, contraception, and abortion-inducing drugs and devices.

49. Because of the religious beliefs set forth above, we cannot make the government-required certifications to a third party to require that third party to provide our employees with access to sterilization, contraception, and abortion-inducing drugs.

50. Because of the religious beliefs set forth above, we cannot take any action that would force Christian Brothers to violate its own religious beliefs in this regard.

51. Further, obeying the Mandate's requirement to participate in the provision of abortion-inducing drugs would violate our public witness to the respect for life and human dignity that we are committed to displaying at all times through our vow of hospitality and our fidelity to Church teaching. It would similarly violate our duty to "advoca[te] for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable," such as "the unborn." Ex. L, USCCB Directives, at No. 3.

52. The Little Sisters believe that our ministry and all of our resources are gifts from God that we must use to God's glory and for the good of all, to help bear the burdens and sufferings of others. ECF No.

1-6, Exhibit E, Little Sisters of the Poor *Mission, Vision, and Values*. We cannot allow those gifts to be co-opted to serve ends that we believe dishonor God and the dignity of the human person.

53. The Mandate threatens the Little Sisters with large fines and penalties if we continue to act in accordance with these religious beliefs.

54. For example, if we continue our practice of providing health benefits to our employees and their families without including free access to sterilization, contraception, and abortion-inducing drugs and devices, we will face fines of "$100 for each day in the noncompliance period with respect to each individual to whom such failure relates." 26 U.S.C. § 4980D(b)(l).

55. Depending on how the I.R.S. applies this penalty, the Little Sisters homes could face tens of millions of dollars of fines *each year* for our inability to facilitate the required coverage.

56. For example, Little Sisters of Denver currently employs 67 full-time employees. If the I.R.S. levies the fine on a per-full-time-employee basis, we would be facing daily fines of $6,700, and annual fines of $2,445,500. If the I.R.S. levies the fine on the basis of total number of employees and dependents receiving benefits, the fines would be orders of magnitude larger.

57 The entire operating budget for Little Sisters of Denver—which currently provides care for 69 needy elderly individuals—is $6,015,000.

58. Likewise, Little Sisters of Baltimore currently employs 54 full-time employees. If the I.R.S. levies the fine on a per-full-time-employee basis, we would

be facing daily fines of $5,400, and annual fines of $1,971,000. If the I.R.S. levies the fine on the basis of total number of employees and dependents receiving benefits, the fines would be orders of magnitude larger.

59. The entire operating budget for Little Sisters of Baltimore—which currently provides loving care for 69 needy elderly individuals—is $7,015,417.

60. Nor can we avoid these fines by choosing not to provide health benefits at all. Cutting off all benefits for our employees would be unconscionable. We love and respect our employees and are dedicated to providing adequate health benefits.

61. Cutting off all employee benefits would also have a severe negative impact on our employees and their families.

62. Cutting off all employee benefits would also have a severe negative impact on our ability to hire and retain qualified medical staff and other employees. Benefits plans are, of course, an important reason that many employees make choices about which jobs to pursue, to keep, and to abandon.

63. Even if we could cut off all benefits in good conscience and without harming our employees or our homes, we would face large government fines for doing so. For example, Little Sisters of Denver would face annual fines of approximately $134,000 for dropping health benefits altogether. Little Sisters of Baltimore would face annual fines of approximately $108,000 for dropping health benefits.

64. For these reasons, the Mandate imposes enormous pressure on the Little Sisters to participate in activities prohibited by our sincerely held religious

beliefs. We cannot provide the benefits in question ourselves, we cannot designate anyone else to provide them, we cannot hire a third party to provide them, and we cannot submit the certifications required to trigger the flow of these benefits.

65. Prior to the Mandate, we engaged in conduct motivated by our sincerely held religious beliefs: providing benefits plans that do not include sterilization, contraception, and abortion-inducing drugs and devices. The Mandate prevents our participation in that religious exercise.

66. The Mandate also places enormous pressure on the Little Sisters to engage in conduct contrary to our sincerely held religious beliefs. Our beliefs forbid us from participating, in any way, in the government's program to promote and facilitate access to sterilization, contraceptives, and abortion-inducing drugs and devices. With the two other Provincial Superiors, I am charged with making decisions for the Little Sisters in the United States. The severe threats of fines and punishment create enormous pressure on us to violate our religious beliefs as the price of continuing our mission of helping the needy elderly.

67. The requirements of the Mandate—providing certain health benefits, designating other parties to provide those benefits, and filing certifications that will make those benefits flow—are highly religiously significant to us, and are forbidden by our religious beliefs, our Congregation's religious mission, and our commitments to God and the Roman Catholic Church. We object not because the Mandate makes us use drugs or devices against our religious beliefs,

but because it forces us to participate as a necessary part of the government's scheme to provide those drugs and devices.

68. The Little Sisters of the Poor do not sue the federal government lightly. We would much prefer not to, which is why we made multiple public statements and filed a detailed public comment with the government to inform them of our sincere religious objection to incorporating us into their scheme. But the government refused to exempt us.

69. Even so, we were reluctant to file this lawsuit, in part because lawsuits are so unusual for us, and even more because we do not want to alarm in any way the elderly poor whom we serve, nor their families, our employees, or our benefactors. But to protect our ability to serve them as we always have, and to avoid violating and publicly rejecting our religious beliefs, our only recourse is this lawsuit. We need and respectfully request immediate relief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of October, 2013, in Washington, D.C.

s/ Mother Loraine Marie Clare Maguire, l.s.p.
Mother Loraine Marie Clare Maguire, L.S.P

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-02611-WJM-BNB

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, a Colorado non-profit corporation, LITTLE SISTERS OF THE POOR, BALTIMORE, INC., a Maryland non-profit corporation, by themselves and on behalf of all others similarly situated,

CHRISTIAN BROTHERS SERVICES, a New Mexico non-profit corporation, and

CHRISTIAN BROTHERS EMPLOYEE BENEFIT TRUST,

Plaintiffs,

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services,

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

THOMAS E. PEREZ, Secretary of the United States Department of Labor,

UNITED STATES DEPARTMENT OF LABOR,

JACOB J. LEW, Secretary of the United States Department of the Treasury, and

UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

DECLARATION OF BROTHER MICHAEL QUIRK

I, Brother Michael Quirk, FSC, do hereby state and declare as follows:

1. My name is Michael Quirk. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements here are true and correct, and they are based on my personal knowledge and/or a review of the business records of Christian Brothers Services and Christian Brothers Employee Benefit Trust (the "Christian Brothers Trust" or "Trust"). If I were called upon to testify to these facts, I could and would competently do so.

2. I am the President of Christian Brothers Services, an Illinois not-for-profit corporation affiliated with The Brothers of the Christian Schools (also known as the "Christian Brothers"), a male religious order of the Catholic Church. I have served in this capacity since 2008.

3. I have been a member of The Brothers of the Christian Schools since 1981. I received an MBA from Lewis University and my doctorate in Education from De Paul University. I served 24 years at De La Salle Institute of Chicago, beginning as a business education teacher and concluding as president. After approximately 24 years in high school ministry, I returned to Christian Brothers Services in 2008 where I began my professional career.

4. I am very familiar with the self-insured health benefit program provided to Catholic employers and their benefits-eligible employees and dependents

through the Christian Brothers Trust. The Christian Brothers Trust is administered by Christian Brothers Services which handles the day to day operations of the Christian Brothers Trust. As President of Christian Brothers Services which serves as the administrator for the Christian Brothers Trust, I am familiar with the business processes of Christian Brothers Services and Christian Brothers Trust, including enrollment. I am also familiar with the Catholic employers that utilize and participate in the Christian Brothers Trust. I have been authorized by Christian Brothers Services and Christian Brothers Employee Benefit Trust to make this declaration.

5. The Christian Brothers Trust provides health and other welfare benefits for current and former employees of Catholic organizations throughout the United States that have adopted the Christian Brothers Trust.

6. Participation in the Christian Brothers Trust is limited to organizations that are: (I) operated under the auspices of the Roman Catholic Church, in good standing thereof, and currently listed, or approved for listing in *The Official Catholic Directory*, published by P.J. Kennedy & Sons; (ii) exempt from federal income taxes under section 501(c)(3) of the Code; and (iii) organized as a non-profit corporation, if the organization is a corporation.

7 *The Official Catholic Directory* includes the names and addresses of the agencies and instrumentalities and the educational, charitable, and religious institutions under the auspices of the Roman Catholic Church in the United States, its

territories, and possessions. Each year since 1946, the Internal Revenue Service has issued a Group Ruling affirmation letter affirming the exemption under section 501(c) of the Code from federal income taxes of all Catholic institutions listed in *The Official Catholic Directory* for that year.

8. The Christian Brothers Trust is a "church plan" within the meaning of section 414(e) of the Code (26 U.S.C. § 414(e)) and has received a private letter ruling from the Internal Revenue Service confirming its status as such.

9. The Christian Brothers Trust is not subject to the Employee Retirement Income Security Act of 1974 ("ERISA") because it has not made an election under section 410(d) of the Code.

10. The Christian Brothers Trust is a self-insured health plan. Therefore, the Christian Brothers Trust does not contract with an insurance company to provide the health benefits provided by the Christian Brothers Trust.

11. The plan year for the Christian Brothers Trust begins on January 1st of each year.

12. The Christian Brothers Trust is managed by a Board of Trustees elected by participating employers in the Christian Brothers Trust.

13. It is my understanding that the Patient Protection and Affordable Care Act ("Affordable Care Act" or "Act") requires an employer's group health plan to cover certain women's "preventive care and screenings." Patient Protection & Affordable Care Act, Pub. L. 111-148 (March 23, 2010), amended by the Health Care & Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010). It is my understanding

that on June 28, 2013, Defendants issued final rules (the "Final Mandate"), *see* 78 Fed. Reg. 39870 (published July 2, 2013). The trustees of the Christian Brothers Trust have not appointed an administrator of the Christian Brothers Trust that is willing to act as a "third party administrator" under the Final Mandate, because the Christian Brothers Trust would thereby be contracting for, arranging for or otherwise facilitating the provision of abortifacients, sterilizations and contraceptives in violation of Catholic teachings.

14. The Christian Brothers Trust is administered by Christian Brothers Services, a New Mexico non-profit corporation that is also affiliated with The Brothers of The Christian Schools.

15. Christian Brothers Services is a Catholic organization designed to "serve the Catholic Church community and other faith-based organizations." Because Christian Brothers Services "understand[s] the unique dynamics of Church organizations and institutions," it serves those entities by helping them "to remain faithful to [their] mission and the universal mission of the Catholic Church." Christian Brothers Services' "incentive is to serve the Church, not profit." *See https://www.cbservices.org/about-us.html.*

16. Jesus taught that "in so far as you did it to the least of these brothers of mine, you did it to me." *See* Matthew 25:34. This teaching is a fundamental part of how the Christian Brothers administer the Christian Brothers Trust.

17. The Christian Brothers Trust and Christian Brothers carefully follow the decisions of the Catholic

Church. Thus, they develop their programs, policies, and procedures in accord with the teachings of the Catholic Church, including its ethical teachings on the inviolable dignity of every human life. These teachings include Catholic religious teachings about abortion, contraception, sterilization, and cooperation with acts that are intrinsically immoral.

18. Authoritative Catholic teachings are located in sacred Scripture and sacred tradition, and are set forth and specified in the Catechism of the Catholic Church, documents of ecumenical councils (such as the Second Vatican Council), papal encyclicals, directives issued by bishops' conferences, and other teaching documents of the Church. *See generally* Catechism of the Catholic Church Nos. 888-892 (describing the teaching office of the Church); *Dei Verbum* No. 10 (describing how "[s]acred tradition and Sacred Scripture form one sacred deposit of the word of God, committed to the Church," and explaining that "the task of authentically interpreting the word of God, whether written or handed on, has been entrusted exclusively to the teaching office of the Church, whose authority is exercised in the name of Jesus Christ").

19. Section 2270 of the Catechism of the Catholic Church (1994) teaches that life begins at conception. It states:

> Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life.

20. Thus, the Catholic Church teaches that a post-conception contraceptive is an abortifacient and "gravely contrary to moral law." Section 2271 of the Catechism of the Catholic Church (1994) provides:

> Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable. Direct abortion, that is to say, abortion willed either as an end or a means, is gravely contrary to the moral law.

21. The Catholic Church also teaches that contraception and sterilization are intrinsic evils. For example, Section 2370 of the Catechism of the Catholic Church (1994) characterizes as "intrinsically evil":

> [e]very action which, whether in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible.

22. Section 234 of the Compendium of the Social Doctrine of the Church (2004) provides that "[a]ll programmes of economic assistance aimed at financing campaigns of sterilization and contraception are to be morally condemned as affronts to the dignity of the person and the family."

23. In a landmark encyclical, Blessed Pope John Paul II made clear that Catholics may never "encourage" the use of "contraception, sterilization, and abortion," teaching that "[I]t is morally unacceptable to encourage, let alone impose, the use of methods such as contraception, sterilization, and

abortion in order to regulate births." *See* Section 91 of *Evangelium Vitae* (1995).

24. Similarly, the United States Conference of Catholic Bishops ("USCCB") has issued a series of directives to inform the provision of health services in every U.S. Catholic health institution. These directives prohibit providing, promoting, or condoning abortions, abortion-inducing drugs, contraceptives, and sterilization. Exhibit 1, USCCB Directives for Catholic Health Care Services at Nos. 45, 52, & 53.

25. The directives specifically warn against partnering with other entities in a manner that could involve Catholic health care services in the provision of such "intrinsically immoral" services. *Id.* at Nos. 67-72.

26. Rather, the USCCB Directives instruct Catholic health care services to "distinguish [themselves] by service to and *advocacy for*" people who are "at the margins of society" and "particularly vulnerable to discrimination," such as "the poor, the uninsured and underinsured; children and the *unborn*; single parents; the elderly; those with incurable diseases and chemical dependencies; racial minorities; immigrants and refugees." *Id.* at No. 3 (emphasis added).

27. The Christian Brothers Trust and Christian Brothers Services are both Catholic organizations operated in accordance with Catholic religious teachings, including teachings on abortion, contraception, sterilization, and cooperation with sin. Consistent with Catholic teachings, the Christian Brothers Trust does not provide and has never

provided coverage for, or access to, contraception, sterilization, abortifacients, and related education and counseling. (Consistent with Church teachings, it does provide coverage for medicinal contraceptives prescribed for non-contraceptive purposes.) Christian Brothers Trust and Christian Brothers Services believe that it would be immoral and sinful for them to intentionally facilitate the provision of contraceptives, abortifacient drugs, sterilizations, and related education and counseling, as would be required by the Final Mandate. Similarly, it would be a violation of Christian Brothers Services' sincerely held Catholic beliefs for it to act as a "third party administrator" under the Final Mandate because it would have to contract for, arrange for or otherwise facilitate the provision of abortifacients, sterilizations and contraception in violation of Catholic teachings.

28. Christian Brothers Trust and Christian Brothers Services are particularly concerned about the possibility that their conduct may lead others to do evil, or think that the Christian Brothers condone evil. *See* Catechism No. 2284, 86 (instructing Catholic institutions to avoid "scandal" and defining "scandal" as "an attitude or behavior which leads another to do evil"; scandal can be caused "by laws or institutions"). Thus, participating in the provision of health benefits that violate Catholic teaching poses a grave concern for them as they interact with Catholic faithful and others who share our beliefs.

29. Obeying the Mandate's requirement to participate in the provision of abortion-inducing drugs would violate our public witness to the respect for life and human dignity that we are committed to

displaying at all times through our fidelity to Church teaching. It would similarly violate our duty to "advoca[te] for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable," such as "the unborn." Ex. 1, USCCB Directives, at 8.

30. Nor can the Christian Brothers Trust and Christian Brothers Services violate their commitment to Christian witness by being seen to participate in the government's program. Doing so would not only directly violate their obligations and vows, but also would risk leading others astray Nor can the Christian Brothers Trust and Christian Brothers Services violate Catholic teachings without jeopardizing the ministries of the class members, because their operating revenue often includes substantial voluntary donations.

31. Because of the religious beliefs set forth above, Christian Brothers Trust and Christian Brothers Services cannot provide health benefits that will include access to sterilization, contraception, and abortion-inducing drugs and devices.

32. Because of the religious beliefs set forth above, Christian Brothers Trust and Christian Brothers Services cannot designate any third party to provide Trust participants or their employees with access to sterilization, contraception, and abortion-inducing drugs and devices.

33. Because of the religious beliefs set forth above, Christian Brothers Trust and Christian Brothers Services cannot facilitate the government-required certifications to a third party to require that third party to provide Trust participants or their

employees with access to sterilization, contraception, and abortion-inducing drugs.

34. Because of the religious beliefs set forth above, Christian Brothers Trust and Christian Brothers Services cannot take any action that would coerce the Trust participants to violate their own religious beliefs in this regard.

35. The Christian Brothers are also guided by Catholic teaching to provide for the health and welfare of the class members' employees and their families by providing them with adequate health benefits. "In return for their labor, workers have a right to wages and other benefits sufficient to sustain life in dignity." *Economic Justice For All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, ¶ 103, available at *http://www.usccb.org/upload/economic_justice_for_all.pdf* ("The provision of wages and other benefits sufficient to support a family in dignity is a basic necessity to prevent this exploitation of workers. The dignity of workers also requires adequate health care ").

36. The Christian Brothers consider these religious ethical teachings binding on how we carry out our religious ministry of providing health benefits to Catholic organizations that are consistent with Catholic doctrine.

37 Christian Brothers Trust and Christian Brothers Services understand the unique dynamics of Church organizations and institutions, they serve those institutions by helping them to remain faithful to their mission and the universal mission of the Catholic Church. One of the reasons the Trust

participants chose to use the Christian Brothers Trust, which does not provide access to abortion, sterilization, and contraception, for health benefits is because they share our religious beliefs and provide benefits accordingly.

38. The class members—all of whom are official Catholic organizations, and all of whom have chosen to provide health benefits through the Trust, which is expressly designed to provide benefits in accordance with Catholic principles—likewise may not participate in the government's program without violating their religion. They are all religiously bound to follow the religious teachings on abortion, sterilization, and contraception set forth above.

39. Plaintiffs Little Sisters of the Poor Home for the Aged, Denver, Colorado ("Little Sisters of Denver"), and Little Sisters of the Poor, Baltimore, Inc. ("Little Sisters of Baltimore"), (collectively the "Little Sisters Homes") that bring this action do so on behalf of themselves and all others similarly situated. The class consists of employers that: (I) have adopted or in the future adopt the Christian Brothers Employee Benefit Trust to provide medical coverage for their "employees" or former employees and their dependents ("employees" for purposes of this requirement has the meaning set forth in Code section 414(e)(3)(B)); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the Final Mandate; and (iii) are not "religious employers" with the meaning of the Final Mandate. The class members are all Catholic organizations operated in accordance with Catholic religious teachings, including teachings on abortion, contraception, sterilization, and cooperation with sin.

and the Christian Brothers Trust does not provide and has never provided coverage for, or access to, contraception, sterilization, abortifacients, and related education and counseling.

40. Based upon my understanding of the criteria under the Final Mandate, Christian Brothers Trust participants currently include approximately 473 Catholic organizations, located in approximately 40 states, that are or could reasonably be construed to be "eligible organizations" under 45 C.F.R. § 147.131(b)&(c) at 78 Fed. Reg. 39870, 39874. These organizations employ over approximately 11,034 employees. Based on our records, I estimate that 5,806 employees now work for plan participants that are large employers (*i.e.*, that average 50 or more full time employees).

41. To a large extent, the class members are small non-profit organizations operating on limited budgets and devoted to religious ministries serving the elderly, poor, infirm, and/or needy. It would be impractical to have all of these class members joined in a single action in a distant locale taking away time and resources from their ministry, and having them incur the expense to do so. Additionally, the proposed class includes unknown, future employers that join the Christian Brothers Trust at a later date or employers that currently qualify for the religious employer exemption as "integrated auxiliaries" of a church but later cease to be integrated auxiliaries. Disposition of the claims of these class members in a single class action will provide substantial benefits to all parties and to the Court.

42. The Christian Brothers Trust encompasses both exempt religious non-profit entities and non-exempt religious non-profit entities. The class definition only includes the religious non-profit entities that could reasonably be construed as non-exempt "eligible organizations." These entities include organizations that might fall within the definition of "integrated auxiliaries" except for the fact that more than 50% of their funding comes from sources other than the Catholic Church.

43. Under the Final Mandate, the participants in the Christian Brothers Trust are faced with the impossible dilemma of (1) paying significant fines and providing their employees with health insurance that does not cover contraception, abortion-inducing drugs, sterilization, and related counseling; or (2) paying significant fines and eliminating their health insurance plans altogether.

44. Based on the criteria that I understand apply under the Federal Regulations, if the Christian Brothers Trust employer plan members decide to continue providing health coverage that does not include contraception, abortion-inducing drugs, sterilization procedures and related counseling, they will incur a $100 per day per individual fine. If Christian Brothers Trust continues to offer employee health insurance without the mandated items on January 1, 2013, I understand that each class member, regardless of its size, will be subject to a penalty beginning on January 1, 2014, of $100 per day "per affected individual." Thus, the non-exempt participants could incur penalties of approximately $1,103,400 per day – $402,741,000 per year – assuming 11,034 employees.

45. Additionally, I am advised that large employers (*i.e.*, those with 50 or more employees) that cancel coverage altogether will be exposed to significant annual excise tax penalties of $2,000 per full-time employee. Consequently, if the non-exempt participants in the Christian Brothers Trust dropped their health coverage altogether, they would face annual penalties of more than $11,612,000 per year, based on estimates of 5,806 employers working with large employers (*i.e.*, averaging 50 or more full time employees).

46. If the Christian Brothers Trust refuses to do anything that would provide coverage for contraceptives and related services, it would expose non-exempt "eligible organizations" that remain in the Trust to financially ruinous penalties that could render them insolvent or foreclose their ability to provide health care coverage for their employees. Indeed, the some class members will likely be forced to curtail or eliminate community and ministry programs.

47 By forcing non-exempt "eligible organizations" to make the difficult decision to leave the Christian Brother Trust either to avoid the penalties or to avoid providing contraception coverage because of their religious belief, the Final Mandate substantially burdens the Christian Brothers Trust's religious exercise and ministry of providing health insurance benefits to Catholic organizations that have adopted the Trust.

48. If the Christian Brothers Trust employer plan members discontinue participation in the Christian Brothers Trust and do not seek replacement

coverage, they would be required to compromise their religious beliefs in that the Catholic faith compels them to promote the spiritual *and* physical well-being of their employees by providing them with health benefits that are consistent with Catholic beliefs. However, the Act and Final Mandate would require them to act against those beliefs.

49. Similarly, by discontinuing all coverage, the Christian Brothers Trust employer plan members would be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which would adversely impact their ministries. In my experience, a key factor to an employer's ability to retain existing employees and recruit new ones is the ability to offer and provide health benefits. Any uncertainty regarding these factors undermines the class members' ability to retain existing employees and recruit new ones.

50. If class members chose to violate their Catholic beliefs and eliminate their health care coverage for their employees' altogether, they would likely need to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation. Otherwise, they face the prospect of a mass exodus of employees.

51. Non-Catholic employers who, unlike those participating in the Christian Brothers Trust, do not object to the Final Mandate on religious grounds do not face this dilemma. The Final Mandate, therefore, is currently placing Christian Brothers Trust participants at a competitive disadvantage in their ability to recruit new and existing employees relative

to employers who do not have religious objections to the Final Mandate.

52. If non-exempt "eligible organizations" were forced to withdraw from the Christian Brothers Trust to avoid the provision of objectionable coverage, it would also have a substantial adverse financial impact on the Christian Brothers Trust and its remaining participating employers because there would be fewer participating employers to share the fixed costs of administration.

53. Similarly, the financial impact on Christian Brothers Trust and Christian Brothers Services is substantial. For "eligible organizations" over 50 employees, Christian Brothers Trust and Christian Brothers Services estimate a loss of $100 million in medical plan contributions for those locations that may be forced to leave the Christian Brother Trust health plan, resulting in an annual reduction in net income of approximately $8 million. For "eligible organizations" under 50 employees, Christian Brothers Trust and Christian Brothers Services estimate a loss of another $30 million in medical plan contributions for those locations that may be forced to leave the Christian Brother Trust health plan, resulting in an annual reduction in net income of approximately $2.4 million.

54. Additionally, if Christian Brothers Services were to resign as administrator of the Christian Brothers Trust prior to January 1, 2014, it would disrupt the administration of the Christian Brothers Trust, thus penalizing the non-exempt "eligible organizations" and the other participating employers in the Christian Brothers Trust. This course would

also dramatically reduce the scope of Christian Brothers Services' religious ministry to provide health benefits to Catholic organizations.

55. If Christian Brother Services were to treat itself as a "third party administrator" under the Final Mandate and provide for or arrange for payments for contraceptive services on its own or through another entity, Christian Brother Services would be violating its religious beliefs because it would, both for itself and the Trust, be contracting for, arranging, paying or otherwise facilitating the provision of contraceptive products and related services, and thus requiring the class members to facilitate that coverage.

56. The Government's "accommodation" does not address Christian Brothers Trust and Christian Brothers Services' fundamental religious objection to improperly facilitating access to the objectionable products and services. This arrangement still requires Christian Brothers Trust and Christian Brothers Services to facilitate the provision of products and services antithetical to the Catholic Faith, since the Trust participants' employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of their participation in the Christian Brothers Trust.

57. The class members would be required to actively facilitate and promote the distribution of these services in ways that are forbidden by their religion. The Final Mandate forces Plaintiffs to contract for, facilitate, or pay for the provision of contraception, sterilization, abortifacients, and related education and counseling in violation of their

religious beliefs, by taking the following actions, among others:

- By delivering a self-certification, Plaintiffs take action for which the ultimate goal is to make contraception and abortifacient coverage available through their health plan.
- By delivering a self-certification, Plaintiffs facilitate the coverage at issue and pressure Christian Brothers Services and Christian Brothers Trust to provide that coverage in violation of their shared Catholic faith.
- Plaintiffs are required to be involved in the process by identifying its employees to the third party administrator for the purpose of enabling the Final Mandate's scheme.
- Plaintiffs would have to coordinate with the third party administrator when they add or remove employees and beneficiaries from their healthcare plans and, as a result, the Final Mandate's scheme.
- Plaintiffs would also have to coordinate with third party administrators to provide notice to plan participants and beneficiaries of the contraceptive payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan, under the auspices of the Plaintiffs self-funded plan. 78 Fed. Reg. at 39876. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. See

26 C.F.R. § 54.9815-2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b); published 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012). The Affordable Care Act requires that participants in a group health plan be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).

- If Plaintiffs must leave the Christian Brothers Trust to avoid penalties if Christian Brothers Trust does not provide the mandated coverage, Plaintiffs would be required to: (I) select another insurer or third party administrator willing to provide for or arrange contraceptive coverage; (ii) negotiate an administrative services agreement with the third party administrator; and (iii) communicate the plan changes to their employees.
- The third party administrator would also be required to provide the contraceptive benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77 Thus, any payment or coverage dispute would presumably be resolved under the terms of the Plaintiffs' plan documents, making them complicit. By delivering a self-certification to the third party administrator, the designation makes the third party administrator a plan administrator with fiduciary duties under a Plaintiff's plan and payments for contraceptive and abortifacient services would be payments made under the auspices of the health plan.

> Similarly, litigation claims relating to or arising from this coverage could theoretically implicate the Class Action Plaintiffs, Christian Brothers Trust, and Christian Brothers Services as parties-for coverage that the Plaintiffs oppose!

58. The only way to provide effective relief for Christian Brothers Trust, Christian Brothers Services, and class members would be to enjoin enforcement of the Final Mandate with respect to all non-exempt "eligible organizations" in the Christian Brothers Trust; otherwise, they will be adversely affected by every penalty and application of the Final Mandate to these organizations.

59. In the past year, Christian Brothers Trust and Christian Brothers Services have expended voluminous resources in studying, commenting on, and responding to every stage of the Final Mandate's administrative process. In addition, they have expended further resources in considering what they would need to do to comply with the Mandate.

60. Christian Brothers Trust and Christian Brothers Services are now planning for the 2014 plan year. In addition to having the plan in place and funded by January 1, 2014, the class members must coordinate regarding the structure and provision of coverage well in advance of January 1, 2014. This is a complex and time-consuming process and is occurring at this very moment and time.

61. I believe there is inadequate time to provide any changes in plan documentation to class members, including any Summary of Benefits and Coverage and notices of any material change in the Summary

of Benefits and Coverage. A lapse in coverage would be disastrous for Plaintiffs' operations and for the employees and their families who depend on the Christian Brothers Trust for health care coverage.

62. I believe the claims of the representatives Little Sisters Homes are typical of the claims of the class in that the Little Sisters Homes and all class members will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and Final Mandate. Furthermore, I believe the factual bases of Defendants' actions are common to all class members. The class members share in the same Catholic beliefs set forth above and, therefore, will suffer the same impact and violation of rights.

63. By definition none of the class members are eligible for the religious employers exemption under the Final Mandate. The Final Mandate forces all of the class members to choose between incurring severe financial hardship or violating their religious beliefs by taking steps to invoke the "accommodation." All of the class claims require a common finding by the Court as to whether the Final Mandate's accommodation and requirement that the class members provide contraceptive coverage in their health plans violates their rights under the Religious Freedom Restoration Act and the First Amendment.

64. I believe the Little Sisters Homes will fairly and adequately protect the interests of the Class. Christian Brothers Trust, Christian Brothers Services, and the Little Sisters Homes have retained counsel with substantial experience in litigating class action cases and in litigating violations of religious

and constitutional rights. Christian Brothers Trust, Christian Brothers Services, and their counsel are committed to prosecuting this action vigorously on behalf of the class members, and have the resources to do so. Christian Brothers Trust and Christian Brothers Services are financially committed to assist the Little Sisters Homes in litigating this matter to conclusion on behalf of the class members. Christian Brothers Trust, Christian Brothers Services, and the Little Sisters Homes do not have an interest adverse to those of the class members.

65. In this case, I believe the prosecution of separate actions by individual class members creates a risk of inconsistent or varying adjudications. With an inconsistent application of the same federal regulation, the courts may establish incompatible and controverting standards of conduct for Defendants. Defendants, the class members, and the Christian Brothers entities would be subject to intense confusion of the applicability of the Final Mandate as to seemingly identical plan employers located in different forums. The Christian Brothers entities would not know how to administer the health plan with certainty, and Defendants would not know how to enforce the Final Mandate with certainty.

66. I believe that all members of the class, Christian Brothers Trust, and Christian Brothers Services are entitled to an injunction prohibiting Defendants from enforcing the Final Mandate against them and from charging or assessing penalties against them for failure to offer or facilitate access to contraceptives (including abortifacient contraceptives), sterilization procedures, and related education and counseling. Plaintiffs and class

members will suffer immediate and irreparable injury if an injunction is not immediately issues, and any other remedies, such as monetary damages. are inadequate to prevent injury and fully compensate the class members, Christian Brothers Trust, and Christian Brothers Services from injury.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON OCTOBER 24, 2013

/s/Brother Michael Quirk, FSC
Br. Michael Quirk, FSC

Issued by USCCB, November 17, 2009

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ETHICAL AND RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTHCARE SERVICES

Fifth Edition

United States Conference for Catholic Bishops

CONTENTS

Preamble

General Introduction

Part One: The Social Responsibility of Catholic Health Care Services

Part Two: The Pastoral and Spiritual Responsibility of Catholic Health Care

Part Three: The Professional-Patient Relationship

Part Four: Issues in Care for the Beginning of Life

Part Five: Issues in Care for the Seriously Ill and Dying

Part Six: Forming New Partnerships with Health Care Organizations and Providers

Conclusion

PREAMBLE

Health care in the United States is marked by extraordinary change. Not only is there continuing change in clinical practice due to technological advances, but the health care system in the United States is being challenged by both institutional and social factors as well. At the same time, there are a number of developments within the Catholic Church affecting the ecclesial mission of health care. Among these are significant changes in religious orders and congregations, the increased involvement of lay men and women, a heightened awareness of the Church's social role in the world, and developments in moral theology since the Second Vatican Council. A contemporary understanding of the Catholic health care ministry must take into account the new challenges presented by transitions both in the Church and in American society.

Throughout the centuries, with the aid of other sciences, a body of moral principles has emerged that expresses the Church's teaching on medical and moral matters and has proven to be pertinent and applicable to the ever-changing circumstances of health care and its delivery. In response to today's challenges, these same moral principles of Catholic teaching provide the rationale and direction for this revision of the *Ethical and Religious Directives for Catholic Health Care Services.*

These Directives presuppose our statement *Health and Health Care* published in 1981.[1] There we presented the theological principles that guide the Church's vision of health care, called for all Catholics to share in the healing mission of the Church,

expressed our full commitment to the health care ministry, and offered encouragement to all those who are involved in it. Now, with American health care facing even more dramatic changes, we reaffirm the Church's commitment to health care ministry and the distinctive Catholic identity of the Church's institutional health care services.[2] The purpose of these *Ethical and Religious Directives* then is twofold: first, to reaffirm the ethical standards of behavior in health care that flow from the Church's teaching about the dignity of the human person; second, to provide authoritative guidance on certain moral issues that face Catholic health care today.

The *Ethical and Religious Directives* are concerned primarily with institutionally based Catholic health care services. They address the sponsors, trustees, administrators, chaplains, physicians, health care personnel, and patients or residents of these institutions and services. Since they express the Church's moral teaching, these Directives also will be helpful to Catholic professionals engaged in health care services in other settings. The moral teachings that we profess here flow principally from the natural law, understood in the light of the revelation Christ has entrusted to his Church. From this source the Church has derived its understanding of the nature of the human person, of human acts, and of the goals that shape human activity.

The Directives have been refined through an extensive process of consultation with bishops, theologians, sponsors, administrators, physicians, and other health care providers. While providing standards and guidance, the Directives do not cover in detail all of the complex issues that confront

Catholic health care today. Moreover, the Directives will be reviewed periodically by the United States Conference of Catholic Bishops (formerly the National Conference of Catholic Bishops), in the light of authoritative church teaching, in order to address new insights from theological and medical research or new requirements of public policy.

The Directives begin with a general introduction that presents a theological basis for the Catholic health care ministry. Each of the six parts that follow is divided into two sections. The first section is in expository form; it serves as an introduction and provides the context in which concrete issues can be discussed from the perspective of the Catholic faith. The second section is in prescriptive form; the directives promote and protect the truths of the Catholic faith as those truths are brought to bear on concrete issues in health care.

GENERAL INTRODUCTION

The Church has always sought to embody our Savior's concern for the sick. The gospel accounts of Jesus' ministry draw special attention to his acts of healing: he cleansed a man with leprosy (Mt 8:1-4; Mk 1:40-42); he gave sight to two people who were blind (Mt 20:29-34; Mk 10:46-52); he enabled one who was mute to speak (Lk 11.14); he cured a woman who was hemorrhaging (Mt 9:20-22; Mk 5:25-34); and he brought a young girl back to life (Mt 9:18, 23-25; Mk 5:35-42). Indeed, the Gospels are replete with examples of how the Lord cured every kind of ailment and disease (Mt 9:35). In the account of Matthew, Jesus' mission fulfilled the prophecy of Isaiah: "He

took away our infirmities and bore our diseases" (Mt 8:17; cf. Is 53:4).

Jesus' healing mission went further than caring only for physical affliction. He touched people at the deepest level of their existence; he sought their physical, mental, and spiritual healing (Jn 6:35, 11:25-27). He "came so that they might have life and have it more abundantly" (Jn 10:10).

The mystery of Christ casts light on every facet of Catholic health care: to see Christian love as the animating principle of health care; to see healing and compassion as a continuation of Christ's mission; to see suffering as a participation in the redemptive power of Christ's passion, death, and resurrection; and to see death, transformed by the resurrection, as an opportunity for a final act of communion with Christ.

For the Christian, our encounter with suffering and death can take on a positive and distinctive meaning through the redemptive power of Jesus' suffering and death. As St. Paul says, we are "always carrying about in the body the dying of Jesus, so that the life of Jesus may also be manifested in our body" (2 Cor 4:10). This truth does not lessen the pain and fear, but gives confidence and grace for bearing suffering rather than being overwhelmed by it. Catholic health care ministry bears witness to the truth that, for those who are in Christ, suffering and death are the birth pangs of the new creation. "God himself will always be with them [as their God]. He will wipe every tear from their eyes, and there shall be no more death or mourning, wailing or pain, [for] the old order has passed away" (Rev 21:3-4).

In faithful imitation of Jesus Christ, the Church has served the sick, suffering, and dying in various ways throughout history The zealous service of individuals and communities has provided shelter for the traveler; infirmaries for the sick; and homes for children, adults, and the elderly.[3] In the United States, the many religious communities as well as dioceses that sponsor and staff this country's Catholic health care institutions and services have established an effective Catholic presence in health care. Modeling their efforts on the gospel parable of the Good Samaritan, these communities of women and men have exemplified authentic neighborliness to those in need (Lk 10:25-37). The Church seeks to ensure that the service offered in the past will be continued into the future.

While many religious communities continue their commitment to the health care ministry, lay Catholics increasingly have stepped forward to collaborate in this ministry. Inspired by the example of Christ and mandated by the Second Vatican Council, lay faithful are invited to a broader and more intense field of ministries than in the past.[4] By virtue of their Baptism, lay faithful are called to participate actively in the Church's life and mission.[5] Their participation and leadership in the health care ministry, through new forms of sponsorship and governance of institutional Catholic health care, are essential for the Church to continue her ministry of healing and compassion. They are joined in the Church's health care mission by many men and women who are not Catholic.

Catholic health care expresses the healing ministry of Christ in a specific way within the local church.

Here the diocesan bishop exercises responsibilities that are rooted in his office as pastor, teacher, and priest. As the center of unity in the diocese and coordinator of ministries in the local church, the diocesan bishop fosters the mission of Catholic health care in a way that promotes collaboration among health care leaders, providers, medical professionals, theologians, and other specialists. As pastor, the diocesan bishop is in a unique position to encourage the faithful to greater responsibility in the healing ministry of the Church. As teacher, the diocesan bishop ensures the moral and religious identity of the health care ministry in whatever setting it is carried out in the diocese. As priest, the diocesan bishop oversees the sacramental care of the sick. These responsibilities will require that Catholic health care providers and the diocesan bishop engage in ongoing communication on ethical and pastoral matters that require his attention.

In a time of new medical discoveries, rapid technological developments, and social change, what is new can either be an opportunity for genuine advancement in human culture, or it can lead to policies and actions that are contrary to the true dignity and vocation of the human person. In consultation with medical professionals, church leaders review these developments, judge them according to the principles of right reason and the ultimate standard of revealed truth, and offer authoritative teaching and guidance about the moral and pastoral responsibilities entailed by the Christian faith.[6] While the Church cannot furnish a ready answer to every moral dilemma, there are many questions about which she provides normative

guidance and direction. In the absence of a determination by the magisterium, but never contrary to church teaching, the guidance of approved authors can offer appropriate guidance for ethical decision making.

Created in God's image and likeness, the human family shares in the dominion that Christ manifested in his healing ministry. This sharing involves a stewardship over all material creation (Gn 1:26) that should neither abuse nor squander nature's resources. Through science the human race comes to understand God's wonderful work; and through technology it must conserve, protect, and perfect nature in harmony with God's purposes. Health care professionals pursue a special vocation to share in carrying forth God's life-giving and healing work.

The dialogue between medical science and Christian faith has for its primary purpose the common good of all human persons. It presupposes that science and faith do not contradict each other. Both are grounded in respect for truth and freedom. As new knowledge and new technologies expand, each person must form a correct conscience based on the moral norms for proper health care.

PART ONE

The Social Responsibility of Catholic Health Care Services

Introduction

Their embrace of Christ's healing mission has led institutionally based Catholic health care services in the United States to become an integral part of the nation's health care system. Today, this complex health care system confronts a range of economic,

technological, social, and moral challenges. The response of Catholic health care institutions and services to these challenges is guided by normative principles that inform the Church's healing ministry.

First, Catholic health care ministry is rooted in a commitment to promote and defend human dignity; this is the foundation of its concern to respect the sacredness of every human life from the moment of conception until death. The first right of the human person, the right to life, entails a right to the means for the proper development of life, such as adequate health care.[7]

Second, the biblical mandate to care for the poor requires us to express this in concrete action at all levels of Catholic health care. This mandate prompts us to work to ensure that our country's health care delivery system provides adequate health care for the poor. In Catholic institutions, particular attention should be given to the health care needs of the poor, the uninsured, and the underinsured.[8]

Third, Catholic health care ministry seeks to contribute to the common good. The common good is realized when economic, political, and social conditions ensure protection for the fundamental rights of all individuals and enable all to fulfill their common purpose and reach their common goals.[9]

Fourth, Catholic health care ministry exercises responsible stewardship of available health care resources. A just health care system will be concerned both with promoting equity of care—to assure that the right of each person to basic health care is respected—and with promoting the good health of all in the community. The responsible

stewardship of health care resources can be accomplished best in dialogue with people from all levels of society, in accordance with the principle of subsidiarity and with respect for the moral principles that guide institutions and persons.

Fifth, within a pluralistic society, Catholic health care services will encounter requests for medical procedures contrary to the moral teachings of the Church. Catholic health care does not offend the rights of individual conscience by refusing to provide or permit medical procedures that are judged morally wrong by the teaching authority of the Church.

Directives

1. A Catholic institutional health care service is a community that provides health care to those in need of it. This service must be animated by the Gospel of Jesus Christ and guided by the moral tradition of the Church.

2. Catholic health care should be marked by a spirit of mutual respect among caregivers that disposes them to deal with those it serves and their families with the compassion of Christ, sensitive to their vulnerability at a time of special need.

3. In accord with its mission, Catholic health care should distinguish itself by service to and advocacy for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable to discrimination: the poor; the uninsured and the underinsured; children and the unborn; single parents; the elderly; those with incurable diseases and chemical dependencies; racial minorities; immigrants and refugees. In particular, the person with mental or physical disabilities,

regardless of the cause or severity, must be treated as a unique person of incomparable worth, with the same right to life and to adequate health care as all other persons.

4. A Catholic health care institution, especially a teaching hospital, will promote medical research consistent with its mission of providing health care and with concern for the responsible stewardship of health care resources. Such medical research must adhere to Catholic moral principles.

5. Catholic health care services must adopt these Directives as policy, require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel.

6. A Catholic health care organization should be a responsible steward of the health care resources available to it. Collaboration with other health care providers, in ways that do not compromise Catholic social and moral teaching, can be an effective means of such stewardship.[10]

7 A Catholic health care institution must treat its employees respectfully and justly. This responsibility includes: equal employment opportunities for anyone qualified for the task, irrespective of a person's race, sex, age, national origin, or disability; a workplace that promotes employee participation; a work environment that ensures employee safety and well-being; just compensation and benefits; and recognition of the

rights of employees to organize and bargain collectively without prejudice to the common good.

8. Catholic health care institutions have a unique relationship to both the Church and the wider community they serve. Because of the ecclesial nature of this relationship, the relevant requirements of canon law will be observed with regard to the foundation of a new Catholic health care institution; the substantial revision of the mission of an institution; and the sale, sponsorship transfer, or closure of an existing institution.

9. Employees of a Catholic health care institution must respect and uphold the religious mission of the institution and adhere to these Directives. They should maintain professional standards and promote the institution's commitment to human dignity and the common good.

PART TWO

The Pastoral and Spiritual Responsibility of Catholic Health Care

Introduction

The dignity of human life flows from creation in the image of God (Gn 1:26), from redemption by Jesus Christ (Eph 1:10; 1 Tm 2:4-6), and from our common destiny to share a life with God beyond all corruption (1 Cor 15:42-57). Catholic health care has the responsibility to treat those in need in a way that respects the human dignity and eternal destiny of all. The words of Christ have provided inspiration for Catholic health care: "I was ill and you cared for me" (Mt 25:36). The care provided assists those in need to experience their own dignity and value, especially

when these are obscured by the burdens of illness or the anxiety of imminent death.

Since a Catholic health care institution is a community of healing and compassion, the care offered is not limited to the treatment of a disease or bodily ailment but embraces the physical, psychological, social, and spiritual dimensions of the human person. The medical expertise offered through Catholic health care is combined with other forms of care to promote health and relieve human suffering. For this reason, Catholic health care extends to the spiritual nature of the person. "Without health of the spirit, high technology focused strictly on the body offers limited hope for healing the whole person."[11] Directed to spiritual needs that are often appreciated more deeply during times of illness, pastoral care is an integral part of Catholic health care. Pastoral care encompasses the full range of spiritual services, including a listening presence; help in dealing with powerlessness, pain, and alienation; and assistance in recognizing and responding to God's will with greater joy and peace. It should be acknowledged, of course, that technological advances in medicine have reduced the length of hospital stays dramatically It follows, therefore, that the pastoral care of patients, especially administration of the sacraments, will be provided more often than not at the parish level, both before and after one's hospitalization. For this reason, it is essential that there be very cordial and cooperative relationships between the personnel of pastoral care departments and the local clergy and ministers of care.

Priests, deacons, religious, and laity exercise diverse but complementary roles in this pastoral

care. Since many areas of pastoral care call upon the creative response of these pastoral caregivers to the particular needs of patients or residents, the following directives address only a limited number of specific pastoral activities.

Directives

10. A Catholic health care organization should provide pastoral care to minister to the religious and spiritual needs of all those it serves. Pastoral care personnel—clergy, religious, and lay alike—should have appropriate professional preparation, including an understanding of these Directives.

11. Pastoral care personnel should work in close collaboration with local parishes and community clergy. Appropriate pastoral services and/or referrals should be available to all in keeping with their religious beliefs or affiliation.

12. For Catholic patients or residents, provision for the sacraments is an especially important part of Catholic health care ministry. Every effort should be made to have priests assigned to hospitals and health care institutions to celebrate the Eucharist and provide the sacraments to patients and staff.

13. Particular care should be taken to provide and to publicize opportunities for patients or residents to receive the sacrament of Penance.

14. Properly prepared lay Catholics can be appointed to serve as extraordinary ministers of Holy Communion, in accordance with canon law and the policies of the local diocese. They should assist pastoral care personnel—clergy, religious, and laity—by providing supportive visits, advising patients regarding the availability of priests for the sacrament

of Penance, and distributing Holy Communion to the faithful who request it.

15. Responsive to a patient's desires and condition, all involved in pastoral care should facilitate the availability of priests to provide the sacrament of Anointing of the Sick, recognizing that through this sacrament Christ provides grace and support to those who are seriously ill or weakened by advanced age. Normally, the sacrament is celebrated when the sick person is fully conscious. It may be conferred upon the sick who have lost consciousness or the use of reason, if there is reason to believe that they would have asked for the sacrament while in control of their faculties.

16. All Catholics who are capable of receiving Communion should receive Viaticum when they are in danger of death, while still in full possession of their faculties.[12]

17 Except in cases of emergency (i.e., danger of death), any request for Baptism made by adults or for infants should be referred to the chaplain of the institution. Newly born infants in danger of death, including those miscarried, should be baptized if this is possible.[13] In case of emergency, if a priest or a deacon is not available, anyone can validly baptize.[14] In the case of emergency Baptism, the chaplain or the director of pastoral care is to be notified.

18. When a Catholic who has been baptized but not yet confirmed is in danger of death, any priest may confirm the person.[15]

19. A record of the conferral of Baptism or Confirmation should be sent to the parish in which

the institution is located and posted in its baptism/confirmation registers.

20. Catholic discipline generally reserves the reception of the sacraments to Catholics. In accord with canon 844, §3, Catholic ministers may administer the sacraments of Eucharist, Penance, and Anointing of the Sick to members of the oriental churches that do not have full communion with the Catholic Church, or of other churches that in the judgment of the Holy See are in the same condition as the oriental churches, if such persons ask for the sacraments on their own and are properly disposed.

With regard to other Christians not in full communion with the Catholic Church, when the danger of death or other grave necessity is present, the four conditions of canon 844, §4, also must be present, namely, they cannot approach a minister of their own community; they ask for the sacraments on their own; they manifest Catholic faith in these sacraments; and they are properly disposed. The diocesan bishop has the responsibility to oversee this pastoral practice.

21. The appointment of priests and deacons to the pastoral care staff of a Catholic institution must have the explicit approval or confirmation of the local bishop in collaboration with the administration of the institution. The appointment of the director of the pastoral care staff should be made in consultation with the diocesan bishop.

22. For the sake of appropriate ecumenical and interfaith relations, a diocesan policy should be developed with regard to the appointment of non-Catholic members to the pastoral care staff of a

Catholic health care institution. The director of pastoral care at a Catholic institution should be a Catholic; any exception to this norm should be approved by the diocesan bishop.

PART THREE

The Professional-Patient Relationship

Introduction

A person in need of health care and the professional health care provider who accepts that person as a patient enter into a relationship that requires, among other things, mutual respect, trust, honesty, and appropriate confidentiality. The resulting free exchange of information must avoid manipulation, intimidation, or condescension. Such a relationship enables the patient to disclose personal information needed for effective care and permits the health care provider to use his or her professional competence most effectively to maintain or restore the patient's health. Neither the health care professional nor the patient acts independently of the other; both participate in the healing process.

Today, a patient often receives health care from a team of providers, especially in the setting of the modern acute-care hospital. But the resulting multiplication of relationships does not alter the personal character of the interaction between health care providers and the patient. The relationship of the person seeking health care and the professionals providing that care is an important part of the foundation on which diagnosis and care are provided. Diagnosis and care, therefore, entail a series of decisions with ethical as well as medical dimensions. The health care professional has the knowledge and

experience to pursue the goals of healing, the maintenance of health, and the compassionate care of the dying, taking into account the patient's convictions and spiritual needs, and the moral responsibilities of all concerned. The person in need of health care depends on the skill of the health care provider to assist in preserving life and promoting health of body, mind, and spirit. The patient, in turn, has a responsibility to use these physical and mental resources in the service of moral and spiritual goals to the best of his or her ability.

When the health care professional and the patient use institutional Catholic health care, they also accept its public commitment to the Church's understanding of and witness to the dignity of the human person. The Church's moral teaching on health care nurtures a truly interpersonal professional-patient relationship. This professional-patient relationship is never separated, then, from the Catholic identity of the health care institution. The faith that inspires Catholic health care guides medical decisions in ways that fully respect the dignity of the person and the relationship with the health care professional.

Directives

23. The inherent dignity of the human person must be respected and protected regardless of the nature of the person's health problem or social status. The respect for human dignity extends to all persons who are served by Catholic health care.

24. In compliance with federal law, a Catholic health care institution will make available to patients information about their rights, under the

laws of their state, to make an advance directive for their medical treatment. The institution, however, will not honor an advance directive that is contrary to Catholic teaching. If the advance directive conflicts with Catholic teaching, an explanation should be provided as to why the directive cannot be honored.

25. Each person may identify in advance a representative to make health care decisions as his or her surrogate in the event that the person loses the capacity to make health care decisions. Decisions by the designated surrogate should be faithful to Catholic moral principles and to the person's intentions and values, or if the person's intentions are unknown, to the person's best interests. In the event that an advance directive is not executed, those who are in a position to know best the patient's wishes—usually family members and loved ones—should participate in the treatment decisions for the person who has lost the capacity to make health care decisions.

26. The free and informed consent of the person or the person's surrogate is required for medical treatments and procedures, except in an emergency situation when consent cannot be obtained and there is no indication that the patient would refuse consent to the treatment.

27 Free and informed consent requires that the person or the person's surrogate receive all reasonable information about the essential nature of the proposed treatment and its benefits; its risks, side-effects, consequences, and cost; and any reasonable and morally legitimate alternatives, including no treatment at all.

28. Each person or the person's surrogate should have access to medical and moral information and counseling so as to be able to form his or her conscience. The free and informed health care decision of the person or the person's surrogate is to be followed so long as it does not contradict Catholic principles.

29. All persons served by Catholic health care have the right and duty to protect and preserve their bodily and functional integrity.[16] The functional integrity of the person may be sacrificed to maintain the health or life of the person when no other morally permissible means is available.[17]

30. The transplantation of organs from living donors is morally permissible when such a donation will not sacrifice or seriously impair any essential bodily function and the anticipated benefit to the recipient is proportionate to the harm done to the donor. Furthermore, the freedom of the prospective donor must be respected, and economic advantages should not accrue to the donor.

31. No one should be the subject of medical or genetic experimentation, even if it is therapeutic, unless the person or surrogate first has given free and informed consent. In instances of nontherapeutic experimentation, the surrogate can give this consent only if the experiment entails no significant risk to the person's well-being. Moreover, the greater the person's incompetency and vulnerability, the greater the reasons must be to perform any medical experimentation, especially nontherapeutic.

32. While every person is obliged to use ordinary means to preserve his or her health, no person should be obliged to submit to a health care procedure that the person has judged, with a free and informed conscience, not to provide a reasonable hope of benefit without imposing excessive risks and burdens on the patient or excessive expense to family or community.[18]

33. The well-being of the whole person must be taken into account in deciding about any therapeutic intervention or use of technology. Therapeutic procedures that are likely to cause harm or undesirable side-effects can be justified only by a proportionate benefit to the patient.

34. Health care providers are to respect each person's privacy and confidentiality regarding information related to the person's diagnosis, treatment, and care.

35. Health care professionals should be educated to recognize the symptoms of abuse and violence and are obliged to report cases of abuse to the proper authorities in accordance with local statutes.

36. Compassionate and understanding care should be given to a person who is the victim of sexual assault. Health care providers should cooperate with law enforcement officials and offer the person psychological and spiritual support as well as accurate medical information. A female who has been raped should be able to defend herself against a potential conception from the sexual assault. If, after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation,

sperm capacitation, or fertilization. It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.[19]

37 An ethics committee or some alternate form of ethical consultation should be available to assist by advising on particular ethical situations, by offering educational opportunities, and by reviewing and recommending policies. To these ends, there should be appropriate standards for medical ethical consultation within a particular diocese that will respect the diocesan bishop's pastoral responsibility as well as assist members of ethics committees to be familiar with Catholic medical ethics and, in particular, these Directives.

PART FOUR

Issues in Care for the Beginning of Life

Introduction

The Church's commitment to human dignity inspires an abiding concern for the sanctity of human life from its very beginning, and with the dignity of marriage and of the marriage act by which human life is transmitted. The Church cannot approve medical practices that undermine the biological, psychological, and moral bonds on which the strength of marriage and the family depends.

Catholic health care ministry witnesses to the sanctity of life "from the moment of conception until death."[20] The Church's defense of life encompasses the unborn and the care of women and their children during and after pregnancy. The Church's commitment to life is seen in its willingness to

collaborate with others to alleviate the causes of the high infant mortality rate and to provide adequate health care to mothers and their children before and after birth.

The Church has the deepest respect for the family, for the marriage covenant, and for the love that binds a married couple together. This includes respect for the marriage act by which husband and wife express their love and cooperate with God in the creation of a new human being. The Second Vatican Council affirms:

> This love is an eminently human one. It involves the good of the whole person. The actions within marriage by which the couple are united intimately and chastely are noble and worthy ones. Expressed in a manner which is truly human, these actions signify and promote that mutual self-giving by which spouses enrich each other with a joyful and a thankful will.[21]
>
> Marriage and conjugal love are by their nature ordained toward the begetting and educating of children. Children are really the supreme gift of marriage and contribute very substantially to the welfare of their parents. Parents should regard as their proper mission the task of transmitting human life and educating those to whom it has been transmitted. They are thereby cooperators with the love of God the Creator, and are, so to speak, the interpreters of that love.[22]

For legitimate reasons of responsible parenthood, married couples may limit the number of their children by natural means. The Church cannot

approve contraceptive interventions that "either in anticipation of the marital act, or in its accomplishment or in the development of its natural consequences, have the purpose, whether as an end or a means, to render procreation impossible."[23] Such interventions violate "the inseparable connection, willed by God between the two meanings of the conjugal act: the unitive and procreative meaning."[24]

With the advance of the biological and medical sciences, society has at its disposal new technologies for responding to the problem of infertility. While we rejoice in the potential for good inherent in many of these technologies, we cannot assume that what is technically possible is always morally right. Reproductive technologies that substitute for the marriage act are not consistent with human dignity. Just as the marriage act is joined naturally to procreation, so procreation is joined naturally to the marriage act. As Pope John XXIII observed:

> The transmission of human life is entrusted by nature to a personal and conscious act and as such is subject to all the holy laws of God: the immutable and inviolable laws which must be recognized and observed. For this reason, one cannot use means and follow methods which could be licit in the transmission of the life of plants and animals.[25]

Because the moral law is rooted in the whole of human nature, human persons, through intelligent reflection on their own spiritual destiny, can discover and cooperate in the plan of the Creator.[26]

Directives

38. When the marital act of sexual intercourse is not able to attain its procreative purpose, assistance that does not separate the unitive and procreative ends of the act, and does not substitute for the marital act itself, may be used to help married couples conceive.[27]

39. Those techniques of assisted conception that respect the unitive and procreative meanings of sexual intercourse and do not involve the destruction of human embryos, or their deliberate generation in such numbers that it is clearly envisaged that all cannot implant and some are simply being used to maximize the chances of others implanting, may be used as therapies for infertility.

40. Heterologous fertilization (that is, any technique used to achieve conception by the use of gametes coming from at least one donor other than the spouses) is prohibited because it is contrary to the covenant of marriage, the unity of the spouses, and the dignity proper to parents and the child.[28]

41. Homologous artificial fertilization (that is, any technique used to achieve conception using the gametes of the two spouses joined in marriage) is prohibited when it separates procreation from the marital act in its unitive significance (e.g., any technique used to achieve extracorporeal conception).[29]

42. Because of the dignity of the child and of marriage, and because of the uniqueness of the mother-child relationship, participation in contracts or arrangements for surrogate motherhood is not permitted. Moreover, the commercialization of such

surrogacy denigrates the dignity of women, especially the poor.[30]

43. A Catholic health care institution that provides treatment for infertility should offer not only technical assistance to infertile couples but also should help couples pursue other solutions (e.g., counseling, adoption).

44. A Catholic health care institution should provide prenatal, obstetric, and postnatal services for mothers and their children in a manner consonant with its mission.

45. Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo. Catholic health care institutions are not to provide abortion services, even based upon the principle of material cooperation. In this context, Catholic health care institutions need to be concerned about the danger of scandal in any association with abortion providers.

46. Catholic health care providers should be ready to offer compassionate physical, psychological, moral, and spiritual care to those persons who have suffered from the trauma of abortion.

47. Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable,

even if they will result in the death of the unborn child.

48. In case of extrauterine pregnancy, no intervention is morally licit which constitutes a direct abortion.[31]

49. For a proportionate reason, labor may be induced after the fetus is viable.

50. Prenatal diagnosis is permitted when the procedure does not threaten the life or physical integrity of the unborn child or the mother and does not subject them to disproportionate risks; when the diagnosis can provide information to guide preventative care for the mother or pre- or postnatal care for the child; and when the parents, or at least the mother, give free and informed consent. Prenatal diagnosis is not permitted when undertaken with the intention of aborting an unborn child with a serious defect.[32]

51. Nontherapeutic experiments on a living embryo or fetus are not permitted, even with the consent of the parents. Therapeutic experiments are permitted for a proportionate reason with the free and informed consent of the parents or, if the father cannot be contacted, at least of the mother. Medical research that will not harm the life or physical integrity of an unborn child is permitted with parental consent.[33]

52. Catholic health institutions may not promote or condone contraceptive practices but should provide, for married couples and the medical staff who counsel them, instruction both about the Church's teaching on responsible parenthood and in methods of natural family planning.

53. Direct sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic health care institution. Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available.[34]

54. Genetic counseling may be provided in order to promote responsible parenthood and to prepare for the proper treatment and care of children with genetic defects, in accordance with Catholic moral teaching and the intrinsic rights and obligations of married couples regarding the transmission of life.

PART FIVE

Issues in Care for the Seriously Ill and Dying

Introduction

Christ's redemption and saving grace embrace the whole person, especially in his or her illness, suffering, and death.[35] The Catholic health care ministry faces the reality of death with the confidence of faith. In the face of death—for many, a time when hope seems lost—the Church witnesses to her belief that God has created each person for eternal life.[36]

Above all, as a witness to its faith, a Catholic health care institution will be a community of respect, love, and support to patients or residents and their families as they face the reality of death. What is hardest to face is the process of dying itself, especially the dependency, the helplessness, and the pain that so often accompany terminal illness. One of the primary purposes of medicine in caring for the dying is the relief of pain and the suffering caused by

it. Effective management of pain in all its forms is critical in the appropriate care of the dying.

The truth that life is a precious gift from God has profound implications for the question of stewardship over human life. We are not the owners of our lives and, hence, do not have absolute power over life. We have a duty to preserve our life and to use it for the glory of God, but the duty to preserve life is not absolute, for we may reject life-prolonging procedures that are insufficiently beneficial or excessively burdensome. Suicide and euthanasia are never morally acceptable options.

The task of medicine is to care even when it cannot cure. Physicians and their patients must evaluate the use of the technology at their disposal. Reflection on the innate dignity of human life in all its dimensions and on the purpose of medical care is indispensable for formulating a true moral judgment about the use of technology to maintain life. The use of life-sustaining technology is judged in light of the Christian meaning of life, suffering, and death. In this way two extremes are avoided: on the one hand, an insistence on useless or burdensome technology even when a patient may legitimately wish to forgo it and, on the other hand, the withdrawal of technology with the intention of causing death.[37]

The Church's teaching authority has addressed the moral issues concerning medically assisted nutrition and hydration. We are guided on this issue by Catholic teaching against euthanasia, which is "an action or an omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated."[38] While medically assisted

nutrition and hydration are not morally obligatory in certain cases, these forms of basic care should in principle be provided to all patients who need them, including patients diagnosed as being in a "persistent vegetative state" (PVS), because even the most severely debilitated and helpless patient retains the full dignity of a human person and must receive ordinary and proportionate care.

Directives

55. Catholic health care institutions offering care to persons in danger of death from illness, accident, advanced age, or similar condition should provide them with appropriate opportunities to prepare for death. Persons in danger of death should be provided with whatever information is necessary to help them understand their condition and have the opportunity to discuss their condition with their family members and care providers. They should also be offered the appropriate medical information that would make it possible to address the morally legitimate choices available to them. They should be provided the spiritual support as well as the opportunity to receive the sacraments in order to prepare well for death.

56. A person has a moral obligation to use ordinary or proportionate means of preserving his or her life. Proportionate means are those that in the judgment of the patient offer a reasonable hope of benefit and do not entail an excessive burden or impose excessive expense on the family or the community.[39]

57 A person may forgo extraordinary or disproportionate means of preserving life. Disproportionate means are those that in the

patient's judgment do not offer a reasonable hope of benefit or entail an excessive burden, or impose excessive expense on the family or the community.

58. In principle, there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally. This obligation extends to patients in chronic and presumably irreversible conditions (e.g., the "persistent vegetative state") who can reasonably be expected to live indefinitely if given such care.[40] Medically assisted nutrition and hydration become morally optional when they cannot reasonably be expected to prolong life or when they would be "excessively burdensome for the patient or [would] cause significant physical discomfort, for example resulting from complications in the use of the means employed."[41] For instance, as a patient draws close to inevitable death from an underlying progressive and fatal condition, certain measures to provide nutrition and hydration may become excessively burdensome and therefore not obligatory in light of their very limited ability to prolong life or provide comfort.

59. The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, unless it is contrary to Catholic moral teaching.

60. Euthanasia is an action or omission that of itself or by intention causes death in order to alleviate suffering. Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way. Dying patients who

request euthanasia should receive loving care, psychological and spiritual support, and appropriate remedies for pain and other symptoms so that they can live with dignity until the time of natural death.[42]

61. Patients should be kept as free of pain as possible so that they may die comfortably and with dignity, and in the place where they wish to die. Since a person has the right to prepare for his or her death while fully conscious, he or she should not be deprived of consciousness without a compelling reason. Medicines capable of alleviating or suppressing pain may be given to a dying person, even if this therapy may indirectly shorten the person's life so long as the intent is not to hasten death. Patients experiencing suffering that cannot be alleviated should be helped to appreciate the Christian understanding of redemptive suffering.

62. The determination of death should be made by the physician or competent medical authority in accordance with responsible and commonly accepted scientific criteria.

63. Catholic health care institutions should encourage and provide the means whereby those who wish to do so may arrange for the donation of their organs and bodily tissue, for ethically legitimate purposes, so that they may be used for donation and research after death.

64. Such organs should not be removed until it has been medically determined that the patient has died. In order to prevent any conflict of interest, the physician who determines death should not be a member of the transplant team.

65. The use of tissue or organs from an infant may be permitted after death has been determined and with the informed consent of the parents or guardians.

66. Catholic health care institutions should not make use of human tissue obtained by direct abortions even for research and therapeutic purposes.[43]

PART SIX

Forming New Partnerships with Health Care Organizations and Providers

Introduction

Until recently, most health care providers enjoyed a degree of independence from one another. In ever-increasing ways, Catholic health care providers have become involved with other health care organizations and providers. For instance, many Catholic health care systems and institutions share in the joint purchase of technology and services with other local facilities or physicians' groups. Another phenomenon is the growing number of Catholic health care systems and institutions joining or co-sponsoring integrated delivery networks or managed care organizations in order to contract with insurers and other health care payers. In some instances, Catholic health care systems sponsor a health care plan or health maintenance organization. In many dioceses, new partnerships will result in a decrease in the number of health care providers, at times leaving the Catholic institution as the sole provider of health care services. At whatever level, new partnerships forge a variety of interwoven relationships: between the various institutional partners, between health

care providers and the community, between physicians and health care services, and between health care services and payers.

On the one hand, new partnerships can be viewed as opportunities for Catholic health care institutions and services to witness to their religious and ethical commitments and so influence the healing profession. For example, new partnerships can help to implement the Church's social teaching. New partnerships can be opportunities to realign the local delivery system in order to provide a continuum of health care to the community; they can witness to a responsible stewardship of limited health care resources; and they can be opportunities to provide to poor and vulnerable persons a more equitable access to basic care.

On the other hand, new partnerships can pose serious challenges to the viability of the identity of Catholic health care institutions and services, and their ability to implement these Directives in a consistent way, especially when partnerships are formed with those who do not share Catholic moral principles. The risk of scandal cannot be underestimated when partnerships are not built upon common values and moral principles. Partnership opportunities for some Catholic health care providers may even threaten the continued existence of other Catholic institutions and services, particularly when partnerships are driven by financial considerations alone. Because of the potential dangers involved in the new partnerships that are emerging, an increased collaboration among Catholic-sponsored health care institutions is

essential and should be sought before other forms of partnerships.

The significant challenges that new partnerships may pose, however, do not necessarily preclude their possibility on moral grounds. The potential dangers require that new partnerships undergo systematic and objective moral analysis, which takes into account the various factors that often pressure institutions and services into new partnerships that can diminish the autonomy and ministry of the Catholic partner. The following directives are offered to assist institutionally based Catholic health care services in this process of analysis. To this end, the United States Conference of Catholic Bishops (formerly the National Conference of Catholic Bishops) has established the Ad Hoc Committee on Health Care Issues and the Church as a resource for bishops and health care leaders.

This new edition of the *Ethical and Religious Directives* omits the appendix concerning cooperation, which was contained in the 1995 edition. Experience has shown that the brief articulation of the principles of cooperation that was presented there did not sufficiently forestall certain possible misinterpretations and in practice gave rise to problems in concrete applications of the principles. Reliable theological experts should be consulted in interpreting and applying the principles governing cooperation, with the proviso that, as a rule, Catholic partners should avoid entering into partnerships that would involve them in cooperation with the wrongdoing of other providers.

Directives

67. Decisions that may lead to serious consequences for the identity or reputation of Catholic health care services, or entail the high risk of scandal, should be made in consultation with the diocesan bishop or his health care liaison.

68. Any partnership that will affect the mission or religious and ethical identity of Catholic health care institutional services must respect church teaching and discipline. Diocesan bishops and other church authorities should be involved as such partnerships are developed, and the diocesan bishop should give the appropriate authorization before they are completed. The diocesan bishop's approval is required for partnerships sponsored by institutions subject to his governing authority; for partnerships sponsored by religious institutes of pontifical right, his *nihil obstat* should be obtained.

69. If a Catholic health care organization is considering entering into an arrangement with another organization that may be involved in activities judged morally wrong by the Church, participation in such activities must be limited to what is in accord with the moral principles governing cooperation.

70. Catholic health care organizations are not permitted to engage in immediate material cooperation in actions that are intrinsically immoral, such as abortion, euthanasia, assisted suicide, and direct sterilization.[44]

71. The possibility of scandal must be considered when applying the principles governing cooperation.[45] Cooperation, which in all other

respects is morally licit, may need to be refused because of the scandal that might be caused. Scandal can sometimes be avoided by an appropriate explanation of what is in fact being done at the health care facility under Catholic auspices. The diocesan bishop has final responsibility for assessing and addressing issues of scandal, considering not only the circumstances in his local diocese but also the regional and national implications of his decision.[46]

72. The Catholic partner in an arrangement has the responsibility periodically to assess whether the binding agreement is being observed and implemented in a way that is consistent with Catholic teaching.

CONCLUSION

Sickness speaks to us of our limitations and human frailty. It can take the form of infirmity resulting from the simple passing of years or injury from the exuberance of youthful energy. It can be temporary or chronic, debilitating, and even terminal. Yet the follower of Jesus faces illness and the consequences of the human condition aware that our Lord always shows compassion toward the infirm.

Jesus not only taught his disciples to be compassionate, but he also told them who should be the special object of their compassion. The parable of the feast with its humble guests was preceded by the instruction: "When you hold a banquet, invite the poor, the crippled, the lame, the blind" (Lk 14:13). These were people whom Jesus healed and loved.

Catholic health care is a response to the challenge of Jesus to go and do likewise. Catholic health care

services rejoice in the challenge to be Christ's healing compassion in the world and see their ministry not only as an effort to restore and preserve health but also as a spiritual service and a sign of that final healing that will one day bring about the new creation that is the ultimate fruit of Jesus' ministry and God's love for us.

Notes

1. United States Conference of Catholic Bishops, *Health and Health Care: A Pastoral Letter of the American Catholic Bishops* (Washington, DC: United States Conference of Catholic Bishops, 1981).

2. Health care services under Catholic auspices are carried out in a variety of institutional settings (e.g., hospitals, clinics, outpatient facilities, urgent care centers, hospices, nursing homes, and parishes). Depending on the context, these Directives will employ the terms "institution" and/or "services" in order to encompass the variety of settings in which Catholic health care is provided.

3. *Health and Health Care*, p. 5.

4. Second Vatican Ecumenical Council, *Decree on the Apostolate of the Laity* (*Apostolicam Actuositatem*) (1965), no. 1.

5. Pope John Paul II, Post-Synodal Apostolic Exhortation *On the Vocation and the Mission of the Lay Faithful in the Church and in the World* (*Christifideles Laici*) (Washington, DC: United States Conference of Catholic Bishops, 1988), no. 29.

6. As examples, see Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* (1974); Congregation for the Doctrine of the

Faith, *Declaration on Euthanasia* (1980); Congregation for the Doctrine of the Faith, *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day* (*Donum Vitae*) (Washington, DC: United States Conference of Catholic Bishops, 1987).

7 Pope John XXIII, Encyclical Letter *Peace on Earth* (*Pacem in Terris*) (Washington, DC: United States Conference of Catholic Bishops, 1963), no. 11; *Health and Health Care*, pp. 5, 17-18; *Catechism of the Catholic Church*, 2nd ed. (Washington, DC: Libreria Editrice Vaticana– United States Conference of Catholic Bishops, 2000), no. 2211.

8. Pope John Paul II, *On Social Concern, Encyclical Letter on the Occasion of the Twentieth Anniversary of "Populorum Progressio"* (*Sollicitudo Rei Socialis*) (Washington, DC: United States Conference of Catholic Bishops, 1988), no. 43.

9. United States Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy* (Washington, DC: United States Conference of Catholic Bishops, 1986), no. 80.

10. The duty of responsible stewardship demands responsible collaboration. But in collaborative efforts, Catholic institutionally based health care services must be attentive to occasions when the policies and practices of other institutions are not compatible with the Church's authoritative moral teaching. At such times, Catholic health care institutions should determine whether or to what degree collaboration would be morally permissible.

To make that judgment, the governing boards of Catholic institutions should adhere to the moral principles on cooperation. See Part Six.

11. *Health and Health Care*, p. 12.

12. Cf. *Code of Canon Law*, c. 921-923.

13. Cf. ibid., c. 867. § 2, and c. 871.

14. To confer Baptism in an emergency, one must have the proper intention (to do what the Church intends by Baptism) and pour water on the head of the person to be baptized, meanwhile pronouncing the words: "I baptize you in the name of the Father, and of the Son, and of the Holy Spirit."

15. Cf. c. 883, 3°

16. For example, while the donation of a kidney represents loss of biological integrity, such a donation does not compromise functional integrity since human beings are capable of functioning with only one kidney.

17 Cf. directive 53.

18. *Declaration on Euthanasia*, Part IV; cf. also directives 56-57.

19. It is recommended that a sexually assaulted woman be advised of the ethical restrictions that prevent Catholic hospitals from using abortifacient procedures; cf. Pennsylvania Catholic Conference, "Guidelines for Catholic Hospitals Treating Victims of Sexual Assault," *Origins* 22 (1993): 810.

20. Pope John Paul II, "Address of October 29, 1983, to the 35th General Assembly of the World Medical Association," *Acta Apostolicae Sedis* 76 (1984): 390.

21. Second Vatican Ecumenical Council, *Pastoral Constitution on the Church in the Modern World* (*Gaudium et Spes*) (1965), no. 49.

22. Ibid., no. 50.

23. Pope Paul VI, Encyclical Letter *On the Regulation of Birth* (*Humanae Vitae*) (Washington, DC: United States Conference of Catholic Bishops, 1968), no. 14.

24. Ibid., no. 12.

25. Pope John XXIII, Encyclical Letter *Mater et Magistra* (1961), no. 193, quoted in Congregation for the Doctrine of the Faith, *Donum Vitae*, no. 4.

26. Pope John Paul II, Encyclical Letter *The Splendor of Truth* (*Veritatis Splendor*) (Washington, DC: United States Conference of Catholic Bishops, 1993), no. 50.

27 "Homologous artificial insemination within marriage cannot be admitted except for those cases in which the technical means is not a substitute for the conjugal act but serves to facilitate and to help so that the act attains its natural purpose" (*Donum Vitae*, Part II, B, no. 6; cf. also Part I, nos. 1, 6).

28. Ibid., Part II, A, no. 2.

29. "Artificial insemination as a substitute for the conjugal act is prohibited by reason of the voluntarily achieved dissociation of the two meanings of the conjugal act. Masturbation, through which the sperm is normally obtained, is another sign of this dissociation: even when it is done for the purpose of procreation, the act remains deprived of its unitive meaning: 'It lacks the sexual relationship called for by the moral order, namely, the relationship which

realizes "the full sense of mutual self-giving and human procreation in the context of true love" (*Donum Vitae*, Part II, B, no. 6).

30. Ibid., Part II, A, no. 3.

31. Cf. directive 45.

32. *Donum Vitae*, Part I, no. 2.

33. Cf. ibid., no. 4. (Washington, DC: United States Conference of Catholic Bishops, 1988), no. 43.

34. Cf. Congregation for the Doctrine of the Faith, "Responses on Uterine Isolation and Related Matters," July 31, 1993, *Origins* 24 (1994): 211-212.

35. Pope John Paul II, Apostolic Letter *On the Christian Meaning of Human Suffering* (*Salvifici Doloris*) (Washington, DC: United States Conference of Catholic Bishops, 1984), nos. 25-27

36. United States Conference of Catholic Bishops, *Order of Christian Funerals* (Collegeville, Minn.: The Liturgical Press, 1989), no. 1.

37 See *Declaration on Euthanasia.*

38. Ibid., Part II.

39. Ibid., Part IV; Pope John Paul II, Encyclical Letter *On the Value and Inviolability of Human Life* (*Evangelium Vitae*) (Washington, DC: United States Conference of Catholic Bishops, 1995), no. 65.

40. See Pope John Paul II, Address to the Participants in the International Congress on "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas" (March 20, 2004), no. 4, where he emphasized that "the administration of water and food, even when provided by artificial means, always represents a

natural means of preserving life, not a *medical act.*" See also Congregation for the Doctrine of the Faith, "Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration" (August 1, 2007).

41. Congregation for the Doctrine of the Faith, Commentary on "Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration."

42. See *Declaration on Euthanasia*, Part IV

43. *Donum Vitae*, Part I, no. 4.

44. While there are many acts of varying moral gravity that can be identified as intrinsically evil, in the context of contemporary health care the most pressing concerns are currently abortion, euthanasia, assisted suicide, and direct sterilization. See Pope John Paul II's *Ad Limina* Address to the bishops of Texas, Oklahoma, and Arkansas (Region X), in *Origins* 28 (1998): 283. See also "Reply of the Sacred Congregation for the Doctrine of the Faith on Sterilization in Catholic Hospitals" (*Quaecumqu Sterilizatio*), March 13, 1975, *Origins* 6 (1976): 33-35: "Any cooperation institutionally approved or tolerated in actions which are in themselves, that is, by their nature and condition, directed to a contraceptive end is absolutely forbidden. For the official approbation of direct sterilization and, *a fortiori*, its management and execution in accord with hospital regulations, is a matter which, in the objective order, is by its very nature (or intrinsically) evil." This directive supersedes the "Commentary on the Reply of the Sacred Congregation for the Doctrine of the Faith on Sterilization in Catholic Hospitals"

published by the National Conference of Catholic Bishops on September 15, 1977, in *Origins* 7 (1977): 399-400.

45. See *Catechism of the Catholic Church*: "Scandal is an attitude or behavior which leads another to do evil" (no. 2284); "Anyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged" (no. 2287).

46. See "The Pastoral Role of the Diocesan Bishop in Catholic Health Care Ministry," *Origins* 26 (1997): 703.

This fifth edition of the *Ethical and Religious Directives for Catholic Health Care Services* was developed by the Committee on Doctrine of the United States Conference of Catholic Bishops (USCCB) and approved as the national code by the full body of the USCCB at its November 2009 General Meeting. This edition of the *Directives*, which replaces all previous editions, is recommended for implementation by the diocesan bishop and is authorized for publication by the undersigned.

Msgr. David J. Malloy, STD
General Secretary, USCCB

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02611-WJM-BNB

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, et al.,

Plaintiffs,

v.

KATHLEEN SEBELIUS, et al.,

Defendants.

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs ask this Court to preliminarily enjoin regulations that are intended to accommodate religious exercise while helping to ensure that women have access to health coverage, without cost-sharing, for preventive services that medical experts deem necessary for women's health and well-being. Subject to an exemption for houses of worship and their integrated auxiliaries, and accommodations for certain other non-profit religious organizations, the regulations that plaintiffs challenge require certain group health plans and health insurance issuers to provide coverage, without cost-sharing (such as a copayment, coinsurance, or a deductible), for, among other things, all Food and Drug Administration (FDA)-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider.

The regulations are the product of a decision by defendants to accommodate concerns expressed by non-profit religious organizations by relieving them of any responsibility to contract, arrange, pay, or refer for contraceptive coverage or services. The regulations also seek to ensure that women who participate in the group health plans of such organizations are not denied access to contraceptive coverage without cost-sharing. To invoke the accommodations, an organization merely needs to certify that it meets the eligibility criteria and share a copy of the certification with its issuer or third-party administrator (TPA). Once it does so, the organization's issuer or TPA takes on the responsibility to provide separate payments for contraceptive services to the organization's plan participants and beneficiaries. The objecting employer does not bear the cost (if any) of providing contraceptive coverage; nor does it administer, contract for, arrange, or refer for such coverage. While defendants continue to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans, they acknowledge that, at this time, they lack authority to require the TPAs of self-insured church plans, like plaintiff Christian Brothers Employee Benefit Trust ("Trust"), to make the separate payments for contraceptive services for participants and beneficiaries in such plans under the accommodation.

Plaintiffs' motion for preliminary injunction should be denied for several reasons. At the outset, plaintiffs lack standing to assert their claims. As noted above, because the Trust is a self-insured

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Plaintiffs' motion for preliminary injunction should be denied for several reasons. At the outset, plaintiffs lack standing to assert their claims. As noted above, because the Trust is a self-insured

church plan, the government lacks authority to require any TPA of the Trust to make the separate payments for contraceptive services for participants and beneficiaries in the plan under the accommodation. Because the remaining plaintiffs offer coverage to their employees through the Trust, the injury of which plaintiffs complain—that the regulations somehow require them to facilitate access to contraceptive services to which they object on religious grounds or to contract, arrange, or pay for such services—simply does not apply to the plaintiffs here and, as a result, they lack standing.

For the same reason, even if plaintiffs had standing, their Religious Freedom Restoration Act (RFRA) claim would fail on the merits. Because the government cannot require any TPA of the Trust to provide separate payments for contraceptive services to the participants and beneficiaries of the Trust, the regulations impose absolutely no burden on plaintiffs' religious exercise, much less a substantial burden as required under RFRA. In short, the regulations do not require plaintiffs to facilitate, or act as a trigger for their employees to obtain, contraceptive coverage, even if such a claim could establish a substantial burden under RFRA, which it cannot. Plaintiffs' First Amendment claims are equally meritless. Indeed, nearly every court to consider similar First Amendment challenges to the prior version of the regulations rejected the claims, and their analysis applies here. Finally, plaintiffs cannot satisfy the remaining requirements for obtaining a preliminary injunction.

BACKGROUND

Before the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010), many Americans did not receive the preventive health care they needed. Due largely to cost, Americans used preventive services at about half the recommended rate. *See* INST. OF MED., CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS 19-20, 109 (2011) ("IOM REP"), AR at 317-18, 407.[1] Section 1001 of the ACA seeks to cure this problem by making preventive care accessible and affordable for many more Americans. Specifically, the provision requires all group health plans and health insurance issuers that offer non-grandfathered health coverage to provide coverage for certain preventive services without cost-sharing, including, "[for] women, such additional preventive care and screenings as provided for in comprehensive guidelines supported by the Health Resources and Services Administration." 42 U.S.C. § 300gg-13(a)(4).

Because there were no existing HRSA guidelines relating to preventive care and screening for women, the Department of Health and Human Services requested that the Institute of Medicine (IOM) develop recommendations to implement the requirement to provide coverage, without cost-sharing, of preventive services for women. IOM REP at 2, AR at 300. After conducting an extensive science-based review, IOM recommended that HRSA

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[1] Where appropriate, defendants have provided parallel citations to the Administrative Record (AR), on file with the Court. *See* ECF No. 28.

guidelines include, as relevant here, "the full range of [FDA]-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity." *Id.* at 10-12, AR at 308-10. IOM determined that coverage, without cost-sharing, for these services is necessary to increase access to such services, and thereby reduce unintended pregnancies (and the negative health outcomes that disproportionately accompany them) and promote healthy birth spacing. *Id.* at 102-03, AR at 400-01.

On August 1, 2011, HRSA adopted guidelines consistent with IOM's recommendations, subject to an exemption relating to certain religious employers authorized by regulations issued that same day (the "2011 amended interim final regulations"). *See* HRSA, Women's Preventive Services: Required Health Plan Coverage Guidelines ("HRSA Guidelines"), AR at 283-84. In February 2012, the government adopted in final regulations the definition of "religious employer" contained in the 2011 amended interim final regulations while also creating a temporary enforcement safe harbor for non-grandfathered group health plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage (and any associated group health insurance coverage). *See* 77 Fed. Reg. 8725, 8726-27 (Feb. 15, 2012), AR at 213-14. The government committed to undertake a new rulemaking during the safe harbor period to adopt new regulations to further accommodate non-grandfathered non-profit religious organizations religious objections to covering contraceptive services. *Id.* at 8728, AR at 215. The regulations challenged

here (the "2013 final rules") represent the culmination of that process. *See* 78 Fed. Reg. 39,870, AR at 1-31, *see also* 77 Fed. Reg. 16,501 (Mar. 21, 2012), AR at 186-93; 78 Fed. Reg. 8456 (Feb. 6, 2013), AR at 165-85.[2]

The 2013 final rules represent a significant accommodation by the government of the religious objections of certain non-profit religious organizations while promoting two important policy goals. The regulations provide women who work for non-profit religious organizations with access to contraceptive coverage without cost sharing, thereby advancing the government's compelling interests in safeguarding public health and ensuring that women have equal access to health care. The regulations do so in a way that does not require non-profit religious organizations with religious objections to contract, arrange, pay, or refer for that coverage.

The 2013 final rules simplify and clarify the religious employer exemption by eliminating the first three criteria and clarifying the fourth. Under the 2013 final rules, a "religious employer" is "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (a)(3)(A)(iii) of the Internal Revenue Code of 1986, as amended," which refers to churches, their integrated auxiliaries, and

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[2] The 2013 final rules generally apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014, except the amendments to the religious employer exemption apply to group health plans and group health insurance issuers for plan years beginning on or after August 1, 2013. *See* 78 Fed. Reg. at 39,871-72, AR at 3-4.

conventions or associations of churches, and the exclusively religious activities of any religious order. 45 C.F.R. § 147.131(a).

The 2013 final rules also establish accommodations with respect to the contraceptive coverage requirement for group health plans established or maintained by "eligible organizations." 78 Fed. Reg. at 39,875-80, AR at 7-12. An "eligible organization" is an organization that satisfies the following criteria:

> (1) The organization opposes providing coverage for some or all of any contraceptive services required to be covered under § 147.130(a)(1)(iv) on account of religious objections.
>
> (2) The organization is organized and operates as a nonprofit entity.
>
> (3) The organization holds itself out as a religious organization.
>
> (4) The organization self-certifies, in a form and manner specified by the Secretary, that it satisfies the criteria in paragraphs (b)(1) through (3) of this section, and makes such self-certification available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (c) of this section applies.

45 C.F.R. § 147.131(b); *see also* 78 Fed. Reg. at 39,874-75, AR at 6-7

Under the 2013 final rules, an eligible organization is not required "to contract, arrange, pay, or refer for contraceptive coverage" to which it has religious objections. 78 Fed. Reg. at 39,874, AR at 6. To be

relieved of any such obligations, the 2013 final rules require only that an eligible organization complete a self-certification form stating that it is an eligible organization and provide a copy of that self-certification to its issuer or TPA. *Id.* at 39,878-79, AR at 10-11. In the case of a self-insured group health plan that is not a self-insured church plan, the organization's TPA, upon receipt of the self-certification, must provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan without cost-sharing, premium, fee, or other charge to plan participants or beneficiaries, or to the eligible organization or its plan. *See id.* at 39,879-80, AR at 11 12. Any costs incurred by the TPA will be reimbursed through an adjustment to Federally-facilitated Exchange (FFE) user fees. *See id.* at 39,880, AR at 12. The regulations do not require the TPAs of self-insured church plans that have not made an election under 26 U.S.C. § 410(d)—like the Trust—to make separate payments for contraceptive services for participants and beneficiaries in such plans under the accommodation. *See* 78 Fed. Reg. at 39,879-39,880, AR at 11-12; 29 U.S.C. § 1003(b)(2).

ARGUMENT

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

I. PLAINTIFFS HAVE NOT SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

A. Plaintiffs Lack Standing To Challenge The Regulations

Plaintiffs' motion for preliminary injunction should be denied at the outset for lack of standing. "[T]he irreducible constitutional minimum of standing" requires that a plaintiff (1) have suffered an injury in fact, (2) that is caused by the defendant's conduct, and (3) that is likely to be redressed by a favorable ruling. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). As to the injury prong, a plaintiff must demonstrate that it has "suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Id.* at 560 (quotations omitted). Allegations of possible future injury do not suffice; rather, "[a] threatened injury must be certainly impending to constitute injury in fact." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (quotation omitted).

The harm alleged by Little Sisters of the Poor Home for the Aged, Denver, and Little Sisters of the Poor, Baltimore, Inc., (collectively, "Little Sisters Plaintiffs") is that, to avail themselves of the accommodations, the challenged regulations require them to engage in actions that "facilitate" and/or make them the "trigger" for the provision of payments for contraceptive services by a third party. *See* Compl. ¶¶ 109-146. Christian Brothers Services and the Trust (collectively, "Christian Brothers Plaintiffs") allege that they are injured because the regulations require them to provide payments for

contraceptive services or contract or otherwise arrange with a third party for such payments to be made with respect to the participants and beneficiaries of the Trust. *See id.* ¶¶ 147-164. The Trust, however, is a self-insured "church plan" under the Employee Retirement Income Security Act (ERISA) that has not made an election under 26 U.S.C. § 410(d). *Id.* ¶¶ 21-23. And defendants lack regulatory authority to require the TPAs of self-insured church plans that have not made such an election to make the separate payments for contraceptive services for participants and beneficiaries in such plans under the accommodation.

In general, under the challenged regulations, when a TPA receives a copy of the self-certification from an eligible employer that sponsors a self-insured group health plan, that TPA becomes an ERISA Section 3(16), 29 U.S.C. § 1002(16), plan administrator and claims administrator for the purpose of providing the separate payments for contraceptive services. *See* 29 C.F.R. § 2510.3-16(b). Thus, the contraceptive coverage requirements can be enforced against such TPAs through defendant Department of Labor's ERISA enforcement authority. *See* 78 Fed. Reg. 39,870, 39,879-39,880 (July 2, 2013), AR at 11-12. But church plans are specifically excluded from the ambit of ERISA. *See* 29 U.S.C. § 1003(b)(2). Thus, ERISA enforcement authority is not available with respect to the TPAs of self-insured church plans under the accommodation, and the government cannot compel such TPAs under such authority to provide contraceptive coverage to self-insured church plan participants and beneficiaries under the

accommodation, including the employees of the Little Sisters Plaintiffs.

The Little Sisters Plaintiffs remain eligible for the accommodations under the final regulation promulgated by defendant Department of the Treasury, 26 C.F.R. § 54.9815-2713A, and therefore need not contract, arrange, pay, or refer for contraceptive coverage.[3] And neither the Christian Brothers Plaintiffs nor any TPA of the Trust is required under the regulations to provide separate payments for contraceptive services or to contract or otherwise arrange with a third party for such payments to be made with respect to the participants and beneficiaries of the Trust. In short, under the challenged regulations, there is absolutely no connection between plaintiffs and contraceptive coverage. Thus, the injury of which plaintiffs complain—with respect to the Little Sisters Plaintiffs, that the regulations somehow require them to facilitate access to contraceptive services to which they object on religious grounds or, with respect to the Christian Brothers Plaintiffs, that the regulations require them to contract, arrange, or pay for contraceptive coverage—simply does not apply to plaintiffs here. Because plaintiffs lack standing to assert their claims, their motion for preliminary injunction should be denied.

B. Plaintiffs' Religious Freedom Restoration Act Claim Is Without Merit

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[3] The same can be said of any other entity that qualifies as an "eligible organization" under the accommodations and participates in the Trust church plan, whether or not that organization is a plaintiff in this action.

Under RFRA, Pub. L. No. 103-141, 107 Stat. 1488 (1993), the federal government "shall not substantially burden a person's exercise of religion" unless that burden is the least restrictive means to further a compelling governmental interest. 42 U.S.C. 2000bb-1. Importantly, "only substantial burdens on the exercise of religion trigger the compelling interest requirement." *Henderson v. Kennedy*, 253 F.3d 12, 17 (D.C. Cir. 2001). "A substantial burden exists when government action puts 'substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008) (citing *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981)). "An inconsequential or *de minimis* burden on religious practice does not rise to this level, nor does a burden on activity unimportant to the adherent's religious scheme." *Id.*, *see Garner v. Kennedy*, 713 F.3d 237, 241-42 (5th Cir. 2013).

Plaintiffs cannot possibly show—as they must—that the challenged regulations substantially burden their religious exercise for the same reason that they have not even alleged an injury sufficient for purposes of Article III standing. The Little Sisters Plaintiffs are eligible for the accommodation, and thus, they need not contract, arrange, pay, or refer for contraceptive coverage. Moreover, the government cannot require any TPA of the Trust, which is a self-insured church plan, to provide separate payments for contraceptive services to the participants and beneficiaries of the Trust, meaning that the Little Sisters Plaintiffs are not "trigger[ing]" or "facilitating" access to contraceptive coverage, Compl. ¶¶ 110, 120, or "provid[ing] designations or

certifications that will cause others to provide [contraceptive coverage]" to their employees, Pls.' Br. at 7, ECF No. 15. Finally, because the Trust is a self-insured church plan, the challenged regulations do not require the Christian Brothers Plaintiffs or their TPAs to provide separate payments for contraceptive services or to contract or otherwise arrange with a third party for such payments to be made with respect to the participants and beneficiaries of the Trust. The regulations, therefore, impose absolutely no burden on plaintiffs' religious exercise, let alone a substantial burden.

Plaintiffs contend the Tenth Circuit's decision in *Hobby Lobby v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013) (en banc), is dispositive of the substantial burden inquiry here, but it is not. *Hobby Lobby* addressed the RFRA claim of for-profit corporations, which, unlike plaintiffs here, are not eligible for the accommodations—and thus are required by the regulations to contract, or otherwise arrange, and pay for, contraceptive coverage for their employees—and do not have a self-insured church plan. The *Hobby Lobby* court had no occasion to consider whether the regulations' accommodations as applied to a self-insured church plan, which relieve eligible non-profit religious organizations like the Little Sisters Plaintiffs of any obligation to contract, arrange, pay, or refer for contraceptive coverage, and do not require church plan TPAs to provide separate payments for contraceptive services, impose a substantial burden on religious exercise. They do not

for the reasons discussed above.[4] Because the regulations do not impose a substantial burden on plaintiffs' religious exercise, plaintiffs' motion for preliminary injunction should be denied.

Even if the challenged regulations were deemed to impose a substantial burden on plaintiffs' religious exercise, the regulations satisfy strict scrutiny because they are narrowly tailored to serve compelling governmental interests in public health and gender equality. Defendants recognize that a majority of the en banc Tenth Circuit rejected the government's strict scrutiny argument in *Hobby Lobby*, and that this Court is bound by that decision. Defendants have filed a petition for a writ of certiorari that asks the Supreme Court to review the Tenth Circuit's decision. Defendants raise the argument here merely to preserve it for appeal.

C. Plaintiffs' Free Exercise Claim Is Without Merit

A law that is neutral and generally applicable does not run afoul of the Free Exercise Clause even if it prescribes conduct that an individual's religion proscribes or has the incidental effect of burdening a particular religious practice. *Emp't Div. v. Smith*, 494 U.S. 872, 879 (1990). "Neutrality and general applicability are interrelated." *Church of the Lukumi*

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[4] Plaintiffs also rely on *Armstrong v. Sebelius*, 2013 WL 5213640 (D. Colo. Sept. 17, 2013), *Briscoe v. Sebelius*, 2013 WL 4781711 (D. Colo. Sept. 6, 2013), and *Newland v. Sebelius*, 881 F Supp. 2d 1287 (D. Colo. 2012), *aff'd*, 2013 WL 5481997 (10th Cir. Oct 3, 2012). But these decisions all hinged on the Tenth Circuit's holding in *Hobby Lobby* and therefore are similarly inapposite here.

Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993). A law is neutral if it does not target religiously motivated conduct either on its face or as applied. *Id.* at 533. A neutral law has as its purpose something other than the disapproval of a particular religion, or of religion in general. *Id.* at 545. A law is generally applicable so long as it does not selectively impose burdens only on conduct motivated by religious belief. *Id.*

Unlike such selective laws, the challenged regulations are neutral and generally applicable. Indeed, nearly every court to have considered a free exercise challenge to the prior version of the regulations has rejected it, concluding that the regulations are neutral and generally applicable.[5] "The regulations were passed, not with the object of interfering with religious practices, but instead to improve women's access to health care and lessen the disparity between men's and women's healthcare costs." *O'Brien*, 894 F Supp. 2d at 1161. The regulations reflect expert medical recommendations about the medical necessity of contraceptive services, without regard to any religious motivations for or against such services. *See, e.g., Conestoga*, 917 F. Supp. 2d at 410.

The regulations, moreover, do not pursue their purpose "only against conduct motivated by religious belief." *Lukumi*, 508 U.S. at 545. The regulations

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[5] *See, e.g., MK Chambers v. U.S. Dep't of Health & Human Servs.*, 2013 WL 1340719, at *5 (E.D. Mich. Apr. 3, 2013); *Conestoga*, 917 F. Supp. 2d at 409-10; *Grote Indus., LLC v. Sebelius*, 914 F. Supp. 2d 943, 952-53 (S.D. Ind. 2012); *Autocam*, 2012 WL 6845677, at *5; *O'Brien*, 894 F. Supp. 2d at 1160-62.

apply to all non-grandfathered health plans that do not qualify for the religious employer exemption or the accommodations for eligible organizations. Thus, "it is just not true that the burdens of the [regulations] fall on religious organizations 'but almost no others.'" *Am. Family Ass'n v. FCC*, 365 F.3d 1156, 1171 (D.C. Cir. 2004). The Tenth Circuit, moreover, has made clear that the existence of "express exceptions for objectively defined categories of [entities]," like grandfathered plans and religious employers, does not negate a law's general applicability. *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1298 (10th Cir. 2004); *see Grace United Methodist v. City of Cheyenne*, 451 F.3d 643, 651 (10th Cir. 2006); *Swanson v. Guthrie Indep. Sch.*, 135 F.3d 694, 698, 701 (10th Cir. 1998).[6]

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[6] Plaintiffs seek to undermine the government's rationale for distinguishing between houses of worship, which are exempt, and other non-profit religious organizations, which are accommodated, by opining that because "[t]he employees of the Plaintiffs all work for openly Catholic institutions [t]here is no reason to believe Plaintiffs' employees are less likely to share their religious beliefs." Pl.'s Br. at 10. Even assuming plaintiffs offered any evidence to support this supposition (and they have not) and even assuming it meant that all of plaintiffs' employees share the organizations' specific religious beliefs regarding the use of contraceptive services, it does not render unlawful the distinctions drawn by the government—which are based on the general characteristics of houses of worship as compared to those of other non-profit religious organizations, like hospitals, universities, and charities, *see* 78 Fed. Reg. at 39,874, 39,887, AR at 6, 19, and not the characteristics of the specific plaintiffs here. *See, e.g., Turner Construction Co. v. United States*, 94 Fed. Cl. 561, 571 (Fed. Cl. 2010) (observing that a reviewing court is not to "sift through an agency's rationale with a fine-toothed comb;" instead, the relevant question is whether the

Finally, even if the regulations were not neutral or generally applicable, plaintiffs' free exercise claim still would fail because, as explained above, the regulations do not substantially burden plaintiffs' religious exercise. *See Axson-Flynn*, 356 F.3d at 1294 (explaining that, even where a law is not neutral or generally applicable, strict scrutiny applies only if the law substantially burdens religious exercise); *Levitan v. Ashcroft*, 281 F.3d 1313, 1320 (D.C. Cir. 2002) (same); *Goodall v. Stafford County School Bd.*, 60 F.3d 168, 173 (4th Cir. 1995) (same).

D. Plaintiffs' Establishment Clause Claim Is Without Merit

"The clearest command of the Establishment Clause is that one religious *denomination* cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982) (emphasis added). A law that discriminates among religions by "aid[ing] one religion" or "prefer[ring] one religion over another" is subject to strict scrutiny. *Id.* at 246; *see also Olsen v. DEA*, 878 F.2d 1458, 1461 (D.D.C. 1989). Thus, for example, the Supreme Court has struck down on Establishment Clause grounds a state statute that was "drafted with the explicit intention" of requiring "particular religious denominations" to comply with registration and reporting requirements while

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agency articulated a rational connection between the facts found and the choice made). Moreover, defendants' decision to incorporate long-standing concepts from the tax code that refer to churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of any religious order, in an effort to avoid entangling inquiries regarding the religious beliefs of plaintiffs' employees, is reasonable.

excluding other religious denominations. *Larson*, 456 U.S. at 254; *see also Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 703-07 (1994) (striking down statute that "single[d] out a particular religious sect for special treatment"). The Court, on the other hand, has upheld a statute that provided an exemption from military service for persons who had a conscientious objection to all wars, but not those who objected to only a particular war. *Gillette v. United States*, 401 U.S. 437 (1971). The Court explained that the statute did not discriminate among religions because "no particular sectarian affiliation" was required to qualify for conscientious objector status. *Id.* at 450-51. "[C]onscientious objector status was available on an equal basis to both the Quaker and the Roman Catholic." *Larson*, 456 U.S. at 247 n.23; *see also Cutter v. Wilkinson*, 544 U.S. 709, 724 (2005) (upholding RLUIPA because it did not "confer[] privileged status on any particular religious sect" or "single[] out [any] bona fide faith for disadvantageous treatment").

Like the statutes at issue in *Gillette* and *Cutter*, the preventive services coverage regulations do not grant any denominational preference or otherwise discriminate among religions. It is of no moment that the religious employer exemption and accommodations for eligible organizations apply to some employers but not others. "[T]he Establishment Clause does not prohibit the government from [differentiating between organizations based on their structure and purpose] when granting religious accommodations as long as the distinction[s] drawn by the regulations [are] not based on religious affiliation." *Grote*, 914 F. Supp. 2d at 954; *accord*

O'Brien, 894 F. Supp. 2d at 1163; *see also, e.g., Droz v. Comm'r of IRS*, 48 F.3d 1120, 1124 (9th Cir. 1995); *Catholic Charities of the Diocese of Albany v. Serio*, 859 N.E.2d 459, 468-69 (Cal. 2004) ("This kind of distinction—not between denominations, but between religious organizations based on the nature of their activities—is not what Larson condemns."). Here, the distinctions established by the regulations are not so drawn.

The regulations' definitions of religious employer and eligible organization "do[] not refer to any particular denomination." *Grote*, 914 F Supp. 2d at 954. The exemption and accommodations are available on an equal basis to organizations affiliated with any and all religions. The regulations, therefore, do not discriminate among religions in violation of the Establishment Clause. Indeed, every court to have considered an Establishment Clause challenge to the prior version of the regulations—which also included a requirement that the organization be an organization as described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended—has rejected it. *See, e.g., O'Brien*, 894 F Supp. 2d at 1162; *Conestoga*, 917 F. Supp. 2d at 416-17; *Grote*, 914 F Supp. 2d at 954.[7]

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[7] Plaintiffs stretch *Colorado Christian University v. Weaver*, 534 F.3d 1245 (10th Cir. 2008), well beyond its facts in asserting that the case stands for the proposition that the Establishment Clause prohibits the government from distinguishing among different types of organizations that adhere to the same religion. The court's decision in *Weaver* was limited to "laws that facially regulate religious issues," *id.* at 1257, and, particularly, those that do so in a way that denies certain religious institutions

E. Plaintiffs' Free Speech Claim Is Without Merit

Plaintiffs' free speech claims fare no better. As plaintiffs point out, Pls.' Br. at 11, to avail themselves of the accommodations, the Little Sisters Plaintiffs must self-certify that they meet the definition of "eligible organization." But, contrary to plaintiffs' assertion, the self-certification does not in any sense "trigger payments" for contraceptive services, *id.*, as the government cannot require any TPA of the Trust, which is a self-insured church plan, to provide payments for contraceptive services. Completion of the simple self-certification form, moreover, is "plainly incidental to the regulation of conduct," *FAIR*, 547 U.S. at 62, not speech. Indeed, every court to review a free speech challenge to the prior contraceptive-coverage regulations has rejected it, in part, because the regulations deal with conduct. *See, e.g., MK Chambers*, 2013 WL 1340719, at *6; *Briscoe v. Sebelius*, 927 F. Supp. 2d 1109 (D. Colo. 2013); *Conestoga*, 917 F Supp. 2d at 418; *Autocam*, 2012 WL 6845677, *8. The

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public benefits that are afforded to all other institutions, whether secular or religious. The court in *Weaver* said nothing about the constitutionality of exemptions from generally applicable laws that are designed to accommodate religion, as opposed to discriminate against religion. A requirement that any religious exemption that the government creates must be extended to all organizations—no matter their structure or purpose—would severely hamper the government's ability to accommodate religion. *See, e.g., Diocese of Albany*, 859 N.E.2d at 464 ("To hold that any religious exemption that is not all-inclusive renders a statute non-neutral would be to discourage the enactment of any such exemptions—and thus to restrict, rather than promote, freedom of religion.").

accommodations likewise regulate conduct by relieving an eligible organization of any obligation to contract, arrange, pay, or refer for contraceptive coverage to which it has religious objections. Accordingly, plaintiffs' self-certifying their eligibility for an accommodation, which is incidental to the regulation of conduct, does not violate their speech rights. *See FAIR*, 547 U.S. at 61-63.

Similarly flawed is plaintiffs' claim that they are barred from expressing particular views to their TPA. Pls.' Br. at 11. Defendants have been clear that "[n]othing in these final regulations prohibits an eligible organization from expressing its opposition to the use of contraception." 78 Fed. Reg. at 39,880 n.41, AR at 12. What the regulations prohibit is an employer's improper attempt to interfere with its employees' ability to obtain contraceptive coverage from a third party by, for example, threatening the TPA with a termination of its relationship with the employer because of the TPA's "arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries." *See* 26 C.F.R. § 54.9815-2713A(b)(1).

As an initial matter, plaintiffs lack standing to assert this claim (for a reason in addition to the one explained above). Because the Trust is a self-insured church plan, the regulations do not require any TPA of the Trust to provide separate payments for contraceptive services or to contract or otherwise arrange with a third party for such payments to be made with respect to Trust participants and beneficiaries. And the Christian Brothers Plaintiffs have alleged that they will not provide contraceptive coverage or pay for contraceptive services because

their religious beliefs prohibit them from doing so. *See* Compl. ¶¶ 27, 30. Therefore, any assertion that the non-interference provision will affect the speech of plaintiffs here is far too speculative for purposes of Article III standing. *See Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013).

Even if plaintiffs had standing to assert this claim, it would fail on the merits. Addressing an analogous argument in the context of the National Labor Relations Act, the Supreme Court concluded that an employer's threatening statements to its employees regarding the effects of unionization fell outside the protection of the First Amendment because they interfered with employee rights. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). The Court explained that there was no First Amendment violation because the employer was "free to communicate any of his general views so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'" *Id.*; *see also Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978). The same is true here. Because the regulations do not prevent plaintiffs from expressing their views regarding the use of contraceptive services, but rather, protect employees' right to obtain payments for contraceptive services through issuers/TPAs, there is no infringement of plaintiffs' right to free speech.

II. PLAINTIFFS CANNOT ESTABLISH IRREPARABLE HARM, AND AN INJUNCTION WOULD INJURE THE GOVERNMENT AND THE PUBLIC

Plaintiffs have not established that they are likely to suffer irreparable harm in the absence of preliminary relief because, as explained above, they have not shown a likelihood of success on the merits of their RFRA or First Amendment claims. *See Hobby Lobby*, 723 F.3d at 1146 (explaining that, in the RFRA and First Amendment context, the merits and irreparable injury prongs of the preliminary injunction analysis merge together, and plaintiffs cannot show irreparable injury without also showing a likelihood of success on the merits). As to the balance of equities and the public interest, "there is inherent harm to an agency in preventing it from enforcing regulations that Congress found it in the public interest to direct that agency to develop and enforce." *Cornish v. Dudas*, 540 F Supp. 2d 61, 65 (D.D.C. 2008); *see also Connection Distrib. Co. v. Reno*, 154 F.3d 281, 296 (6th Cir. 1998) (indicating that granting an injunction against the enforcement of a likely constitutional statute would harm the government). Accordingly, plaintiffs have not established the three remaining elements necessary to obtain a preliminary injunction.[8]

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[8] In their motion for preliminary injunction, plaintiffs argue that "[t]he benefits of the requested injunction [should] extend beyond the named plaintiffs to encompass all members of the proposed class." Pls. Br. at 13. Defendants believe entry of preliminary injunctive relief is inappropriate in this case for the many reasons explained above. Nevertheless, if the Court disagrees and concludes that the named plaintiffs have met their burden of establishing jurisdiction and all four elements for obtaining a preliminary injunction, defendants do not object to the scope of the resulting preliminary injunction including the named plaintiffs as well as any members of the class plaintiffs have proposed in their complaint. *See* Compl. ¶ 16.

Dated: November 8, 2013

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General
JOHN F WALSH
United States Attorney
JENNIFER RICKETTS
Director
SHEILA M. LIEBER
Deputy Director
s/ Michelle R. Bennett
MICHELLE R. BENNETT
Trial Attorney (CO Bar No. 37050)
United States Department of Justice
Civil Division, Federal Programs Branch
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Email: michelle.bennett@usdoj.gov

Defendants, however, reserve the right to oppose class certification and the entry of any permanent relief on a class-wide basis.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on November 8, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

mrienzi@becketfund.org

akeim@becketfund.org

cscherz@lockelord.com

dblomberg@becketfund.org

sroberts@lockelord.com

and I hereby certify that I have mailed or served the document or paper to the following non-CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by nonparticipant's name:

None.

s/ Michelle R. Bennett
MICHELLE R. BENNETT
Trial Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, a Colorado non-profit corporation, *et al.*,

Plaintiffs,

v.

KATHLEEN SEBELIUS, *et al.*

Defendants.

Civil No. 1:13-cv-02611

SUPPLEMENTAL DECLARATION OF MOTHER LORAINE MARIE CLARE MAGUIRE

1. My name is Mother Loraine Marie Clare Maguire. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the Provincial Superior of the Province of Baltimore for the Little Sisters of the Poor.

2. I make this declaration as a supplement to my declaration of October 21, 2013 ("First Mother Loraine Declaration").

3. My prior declaration set forth the religious beliefs of the Little Sisters of the Poor (the "Little Sisters") concerning the God-given worth of human beings from conception to death, and its objection to deliberately taking any action that would participate in facilitating access to abortifacients, contraceptives, or sterilization. *See* First Mother Loraine Declaration at ¶¶ 22-52.

4. My prior declaration also stated that the Little Sisters of the Poor, Baltimore, Inc., and the Little Sisters of the Poor Home for the Aged, Denver, Colorado have adopted the Christian Brothers Employee Benefit Trust (the "Christian Brothers Trust") to provide medical benefits coverage for their employees. *Id.* at ¶ 20.

5. It is my understanding that Christian Brothers Trust is a church health plan, which is a self-funded, multiple employer health plan that is given a special status by the IRS. It is further my understanding that Christian Brothers Services is a third party administrator for the Christian Brothers Trust church health plan.

6. I understand that the government has now argued that part of its scheme for distributing contraceptives, sterilization, and abortifacients to the Little Sisters' employees is not working "at this time." Dkt. 29, Def's Response at 5-6. In particular, I understand that the government claims that it lacks the authority "at this time" to force the third party administrator of a self-insured church health plan like Christian Brothers Services to make payments for these drugs. *Id.* However, my understanding is that the government will still require the Little Sisters to execute and submit to Christian Brothers Services a prescribed self-certification form.

7 The government's prescribed self-certification form is available at *http://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf* (last visited November 15, 2013), and is attached to this declaration as Exhibit O.

8. I have reviewed the self-certification form and considered the government's new position. The government's new position does not change our religious objection to complying with the "accommodation" created under the final rules. 78 Fed. Reg. 39870, 39879-80 (July 2, 2013).

9. The Little Sisters' religious beliefs prohibit us from authorizing anyone to arrange for or make payments for contraceptives, sterilization, and abortifacients; take action that triggers the provision of contraceptives, sterilization, and abortifacients; or is the but-for cause of the provision of contraceptives, sterilization, and abortifacients. It makes no difference whether those payments will take place now or next year. Under Catholic religious principles, the Little Sisters simply cannot:

A. Sign the self-certification form that on its face authorizes another organization to deliver contraceptives, sterilization, and abortifacients to the Little Sisters' employees and other beneficiaries now;

B. Deliver the self-certification form to another organization that could then rely on it as an authorization to deliver these contraceptives, sterilization, and abortifacients to the Little Sisters' employees and beneficiaries, now or in the future;

C. Agree to refrain from speaking to that other organization and instructing or asking it not to deliver contraceptives, sterilization, and abortifacients to the Little Sisters' employees;

D. Create a provider-insured relationship (between the Little Sisters and Christian Brothers Services or any other third-party administrator[1]), the sole purpose of which would be to provide contraceptives, sterilization, and abortifacients;

E. Participate in a scheme, the sole purpose of which is to provide contraceptives, sterilization, and abortifacients to the Little Sisters' plan employees or other beneficiaries.

Yet the government still requires the Little Sisters to do all of these things, or face massive penalties.

10. Specifically, the government still wants the Little Sisters to comply with its "accommodation" by filling out the self-certification form.

11. On the front of the form, the Little Sisters must certify its objection to "providing coverage for some or all of any contraceptive services." Ex. O at 1.

12. On the back of the form, the government states that the Little Sisters "or its plan must provide a copy of this certification to a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement." Ex. O at 2.

13. Also, on the back of the form, there is a "Notice to Third Party Administrators of Self-Insured Health

---

[1] While I understand Christian Brothers Services to be a third party administrator for the plan, I also understand that the government has not yet taken a clear position as to whether it expects us to give the form to Christian Brothers Services or some other entity.

Plans," which states that the form "constitutes notice to the third party administrator that [t]he obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A," and that "[t]his certification is an instrument under which the plan is operated." Ex. O at 2.

14. The self-certification form does not notify the third party administrators of self-insured church health plans of the government's opinion expressed in this litigation that they cannot currently be forced by the government to comply with the federal regulations cited on the form.

15. The self-certification form does not notify the third party administrators of self-insured church health plans that the certification is *not* a valid "instrument under which the plan is operated."

16. It is my understanding that the final rules prevent the Little Sisters from telling any third party administrator to disregard the instructions on the form. Specifically, the final rules state that the Little Sisters "must not, *directly or indirectly*, seek to influence the third party administrator's decision" to "provide or arrange separate payments for contraceptive services for participants or beneficiaries." 26 C.F.R. § 54.9815–2713A(b)(3) (emphasis added).

17 Thus, providing a third party administrator with this form, as the "accommodation" requires, could be construed by the third party administrator as an authorization to provide or pay for contraceptives, sterilizations, or abortifacients.

18. Moreover, the government has stated that it "continue[s] to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans[.]" Dkt. 29, Def's Response at 2.

19. Thus, providing a third party administrator with this form, as the "accommodation" requires, could be relied upon by the government as an authorization to provide or pay for contraceptives, sterilization, and abortifacients as soon as the government has chosen how it will extend the "accommodation's" requirements to the third party administrators of self-insured church health plans.

20. I do not understand the government's actions. If the self-certification form is not part of the scheme to deliver contraceptives, sterilization, and abortifacients to the Little Sisters' employees, I do not understand why the government continues to insist that the Little Sisters sign and deliver the form. Given the form's origin as part of the "accommodation's" contraceptive delivery scheme, and the government's continued insistence on my silence about the issue, it seems very likely to me that the government's insistence that the Little Sisters sign and deliver this form is based on the government's view that doing so will aid in the delivery of contraceptives, sterilization, and abortifacients. The Little Sisters' faith forbids it from participating in the government's scheme, even if that scheme is not fully operational right now.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 15, 2013

/s/ Mother Loraine Marie Clare Maguire, lsp
Mother Loraine Marie Clare Maguire, L.S.P

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, a Colorado non-profit corporation, *et al.*, v. KATHLEEN SEBELIUS, *et al.*	Civil No. 1:13-cv-02611 **SUPPLEMENTAL DECLARATION OF BROTHER MICHAEL QUIRK**

SUPPLEMENTAL DECLARATION OF BROTHER MICHAEL QUIRK

I, Brother Michael Quirk, FSC, do hereby state and declare as follows:

1. My name is Michael Quirk. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements here are true and correct, and they are based on my personal knowledge and/or a review of the business records of Christian Brothers Services and Christian Brothers Employee Benefit Trust (the "Christian Brothers Trust" or "Trust"). If I were called upon to testify to these facts, I could and would competently do so.

2. I am the President of Christian Brothers Services. I am very familiar with the self-insured

health benefit program provided to Catholic employers and their benefits-eligible employees and dependents through the Christian Brothers Trust. The Christian Brothers Trust is administered by Christian Brothers Services which handles the day to day operations of the Christian Brothers Trust. As President of Christian Brothers Services which serves as the administrator for the Christian Brothers Trust, I am familiar with the business processes of Christian Brothers Services and Christian Brothers Trust, including enrollment. I am also familiar with the Catholic employers that utilize and participate in the Christian Brothers Trust. I have been authorized by Christian Brothers Services and Christian Brothers Trust to make this declaration.

3. This supplemental declaration is in furtherance of my earlier declaration offered in support of the Plaintiffs' Motion for Preliminary Injunction.

4. I understand that, after Christian Brothers Services and Christian Brothers Trust filed their Complaint and Motion for Preliminary Injunction in this action, the government has argued that the government lacks the authority "at this time" to force the third party administrator ("TPA") of a self-insured church health plan like Christian Brothers Trust to make separate payments for contraceptive services for participants and beneficiaries under the Mandate's accommodation. However, my understanding is that the government will still require member employers of the Christian Brothers Trust to execute and submit to Christian Brothers Services a prescribed self-certification form.

5. The government's prescribed self-certification form is available at http://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf. I have reviewed the self-certification form. The government's new position does not change the religious objection to complying with the "accommodation" created under the final rules for Christian Brothers Services, Christian Brothers Trust, and employer members of Christian Brothers Trust.

6. On the back of the self-certification form, the government states that our Catholic employers "or [their] plan must provide a copy of this certification to a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement."

7 Also, on the back of the form, there is a "Notice to Third Party Administrators of Self-Insured Health Plans," which states that the form "constitutes notice to the third party administrator that [t]he obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A," and that "[t]his certification is an instrument under which the plan is operated." It is my understanding that these regulations *require* that the third party administrator *shall* provide or arrange payments for the complained of contraceptive services.

8. Plaintiffs' religious beliefs prohibit us from: authorizing anyone to arrange for or make payments for contraceptives, sterilization, and abortifacients; taking action that triggers the provision of

contraceptives, sterilization, and abortifacients; or take action that is the but-for cause of the provision of contraceptives, sterilization, and abortifacients. It makes no difference whether those payments will take place now or next year. Under Catholic religious principles, Plaintiffs cannot do the following and object to: Signing the self-certification form that on its face authorizes and mandates another organization to deliver contraceptives, sterilization, and abortifacients to employees and other beneficiaries now; Delivering the self-certification form to another organization that could then rely on it as an authorization to deliver these contraceptives, sterilization, and abortifacients to employees and beneficiaries, now or in the future; Agreeing to refrain from speaking to other organizations and instructing or asking them not to deliver contraceptives, sterilization, and abortifacients to employees; Creating a provider-insured relationship (between plan beneficiaries and Christian Brothers Services or any other third-party administrator), the sole purpose of which would be to provide contraceptives, sterilization, and abortifacients; Participating in a scheme, the sole purpose of which is to provide contraceptives, sterilization, and abortifacients to employees or other beneficiaries. Christian Brothers Trust and Christian Brothers Services believe that it would be immoral and sinful for them to intentionally facilitate the provision of contraceptives, abortifacient drugs, sterilizations, and related education and counseling, as would be required by the Mandate. Similarly, it would be a violation of Christian Brothers Services' sincerely held Catholic beliefs for it to act as a "third party

administrator" under the Mandate because it would have to contract for, arrange for or otherwise facilitate the provision of abortifacients, sterilizations and contraception in violation of Catholic teachings. Christian Brothers Trust and Christian Brothers Services are particularly concerned about the possibility that their conduct may lead others to do evil, or think that the Christian Brothers condone evil. Obeying the accommodation requirements to participate would violate our public witness to the respect for life and human dignity that we are committed to displaying at all times through our fidelity to Church teaching. It would similarly violate our duty to "advoca[te] for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable," such as "the unborn."

9. Yet the government still requires the Plaintiffs to do these things, or face massive penalties. Specifically, the government still wants the Christian Brothers Trust eligible organizations to comply with its "accommodation" by filling out the self-certification form. If they do not, they will be charged substantial penalties. Furthermore, the regulations continue to exist, and the government has stated an intent to enforce these regulations in the future in their Response to Plaintiffs' Motion for Preliminary Injunction by their statement that they "continue to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans." Requiring Plaintiffs to submit these self-certification is part of the scheme to provide this coverage to which Plaintiffs object.

10. Thus, Plaintiffs continue to need a judicial declaration and injunction in this matter

11. The Christian Brothers are also guided by Catholic teaching to provide for the health and welfare of the class members' employees and their families by providing them with adequate health benefits. Even with the government's new position, the participants in the Christian Brothers Trust are faced with an impossible dilemma. If they refuse to fill out the self-certification because of their religious objection, they face significant fines. If they eliminate their health plan altogether to ensure that they are not required to participate in the government's scheme, they will be denied the opportunity to follow Catholic teachings to provide for the health and welfare of their employees and also face significant fines if they have more than 49 employees. By forcing non-exempt "eligible organizations" to make the difficult decision to leave the Christian Brother Trust either to avoid the penalties or to avoid participating in the government's scheme because of their religious belief, the Mandate substantially burdens the Christian Brothers Trust's religious exercise and ministry of providing health insurance benefits to Catholic organizations that have adopted the Trust. Also, it would also have a substantial adverse financial impact on the Christian Brothers Services, Christian Brothers Trust, and its remaining participating employers because there would be fewer participating employers to share the fixed costs of administration.

12. Additionally, despite the government's statements, the Affordable Care Act (the "Act") provisions continue to require third party

administrators to provide contraceptive coverage. It is my understanding that regulations pertaining to the Act provide that "if a third party administrator receives a copy of the [self] certification the third party administrator shall provide or arrange payments for contraceptive services." 29 C.F.R. §2590.715–2713A(b)(2) (emphasis added); 26 C.F.R. § 54.9815–2713A(b)(2). It is also my understanding that the preamble to these regulations explains, "[a] third party administrator that receives a copy of the self-certification must provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. 39,879, 39,880 (July 2, 2013) (emphasis added). It is my understanding that there is no exception for church-plan TPAs in the regulations, and the regulations on their face appear to apply to all TPAs. Furthermore, as previously mentioned, the government has stated an intent to enforce these regulations in the future by their statement that they "continue to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans." Accordingly, Christian Brothers Trust and Christian Brothers Services continue to need a judicial declaration and injunction from the Court finding that these regulations to not apply to them.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON NOVEMBER 14, 2013

/s/ Br. Michael Quirk
Br. Michael Quirk, FSC

From: Fish David L

Sent: Friday. July 20, 2012 10:54 AM

To: Jeanne_M_Lambrew [Redacted] for Ellen_J_Montz [Redacted] for

Cc: Livingston Catherine E., Richardson Virginia G; Marks Nancy J; Lerner Lois G; Ingram Sarah H.

Subject: RE: Questions

In the interest of time, unless someone else knows off the top of their head there is probably not a quick answer.

It appears that a significant number 6103 do file Form 990.

6103

The ones I looked at quickly report a significant amount of program service revenue (probably fees for counseling services) and the 6103 in medicare/medicaid.

The citation should be to Reg. 1.6033-2(h).

From: Ingram Sarah H

Sent: Friday July 20, 2012 11:28 AM

To: Fish David L; Lerner Lois G; Marks Nancy J; Richardson Virginia G

Cc: Livingston Catherine E; Ingram Sarah H

Subject FW· questions

Importance: High

Hoping there is a quick answer while I prep for something else please copy me on the answer.

From: Lambrew, Jeanne Redacted for Privacy (OGR)

Sent: Friday July 20, 2012 9:47 AM

To: Ingram Sarah H; Montz, Ellen

Cc: Livingston Catherine E

Subject: RE: questions

Thanks. One More.

It looks like Rev Proc 2011 15, 2011-3, IRB 322 says that an organization is assumed to be internally supported *unless* it both meets the 50 percent test and "offers admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public..." The question is: 6103 does not meet the "for sale" prong of the test, so since it fails to meet that, why isn't it considered an integrated auxiliary?

This is time sensitive possible to get an answer by noon? Thanks.

From: Ingram Sarah H Redacted for Privacy (OGR)

Sent: Thursday, July 19, 2012 7:40 PM

To: Lambrew, Jeanne; Montz, Ellen

Cc: Livingston Catherine E; Ingram Sarah H

Subject: RE: questions

I have tried to collect the 6033 questions to ensure you have what I have from the team. I realize that there have been interim calls and that Treasury OTP is handling the church plan questions. Jeanne's latest questions are at the end.

Can you help us out quickly with the below three questions on non-filers of 990s:

1. Are schools automatically exempt from filing? See the 6103 and the 6103 below.

   No. Only schools below-college-level that are "affiliated" with a church or operated by a religious order. These schools, while exempt from filing, would not meet the reg's religious employer test unless they are a church or integrated auxiliary of a church.

   Colleges would generally be required to file Form 990. See, e.g. *http://lfcny.fdncenter.org/990_pdf_archive/356/356071917/356071917_200806_990.pdf* (The large well known "6103 universities—e.g., 6103 do not appear to be part of the 6103 group ruling. They also file returns.)

2. Would a free standing groups of schools like 6103 file 990s? See link below.

   Each entity would have to be evaluated separately to determine whether it had an exemption from filing. These schools appear to qualify under the exception for schools below college level affiliated with a church or operated by a religious order. Again, these schools, while they could be exempt from filing, would not meet the religious employer test unless they are a church or integrated auxiliary of a church.

3. The 6103 refers to "6103..." What does that mean? Can you give an example of this type of organization?

   Very generally, these organizations, under the control of the church (not Goldman's or Fidelity), manage the church's investment portfolio or retirement fund that covers the ministers and

employees. As noted in the 6103 these organizations qualify for an exemption from filing only if they meet the test for "integrated auxiliary."

6103

****

(4) First I wanted to follow up on the third question. We found the following document and are still trying to figure out if an accountant or fund manager that gets more than half of its revenue from churches would be exempt under the fourth prong as a non-filer of a 990?

http://www.unclefed.com/Tax-Bulls/1996/RO96-10.PDF

> Having churches as clients does not determine the issue. You have to start with the concept of being a church itself (clearly not) *or* an integrated auxiliary of a church. For integrated auxiliary it has to be exempt itself *and* then be affiliated *and* then be internally supported. So if an accountant just has lots of church clients he would be a vendor of services but not exempt, not affiliated and, even if he met the first two prongs unlikely to meet the support rule if he is affiliated with one but providing services (and getting revenue) from a variety of other clients.

(5) Second, assuming that the answer is no, do we feel at this point we can say that we believe that replacing the four-prong test with the fourth prong will not expand the number of workers in health plans that are exempt from contraception coverage? What more needs to be done to make such a determination?

I apologize because I am missing something I have always seen prongs 1-3 as limiters on the broader pool that could meet prong 4 (26 USC sec. 6033(a)3)(A)(i) and (iii)). Especially prong 3 (primarily serves persons who shares its tenets). The soup kitchen that is in the tax-exemption group ruling, for example, that is most likely an integrated auxiliary of a church (tax-exempt; affiliated; funded by the church) for purposes of 6033, does not limit the persons it serves.

Not sure what you are looking for on your question since I don't think it is possible to say that zero additional people would fall into the reg rule. If you are looking for quantification of the delta between using prongs 1-4 and using only prong 4, my sense anecdotally is that the delta is more than zero but I don't think we would have any way of quantifying it for you.

From: Lambrew, Jeanne Redacted for Privacy (OGR)

Sent: Thursday, July 19, 2012 5:50 PM

To: Ingram Sarah H; Montz, Ellen

Cc: Livingston Catherine E

Subject: RE: questions

HI, I have two follow up questions.

First I wanted to follow up on the third question. We found the following document and are still trying to figure out if an accountant or fund manager that gets more than half of its revenue from churches would be exempt under the fourth prong as a non-filer of 990?

http://www.unclefed.com/Tax-Bulls/1996/RO96-10.PDF

Second, assuming that the answer is no, do we feel at this point we can say that we believe that replacing the four-prong test with the fourth prong will not expand the number of workers in health plans that are exempt from contraception coverage? What more needs to be done to make such a determination?

Thanks.

From: Ingram Sarah H Redacted for Privacy (OGR)

Sent: Wednesday, July 18, 2012 7:23 PM

To: Montz, Ellen

Cc: Lambrew, Jeanne; Ingram Sarah H; Livingston Catherine E

Subject: RE: questions

Sorry I just saw this. Will also see what the specialists can add in the am. Maybe comments below are helpful in the meantime....or not.

From: Montz, Ellen Redacted for Privacy (OGR)

Sent: Wednesday, July 18, 2012 5:33 PM

To: Livingston, Catherine E; Ingram Sarah H

Cc: Lambrew, Jeanne

Subject: FW: questions

Hi Cathy and Sarah,

Can you help us out quickly with the below three questions on non-filers of 990s:

1. Are schools automatically exempt from filing? See the 6103 and the 6103 below.

   Below-college-level schools that are "affiliated" with a church or operated by a religious order generally don't have to file. If they are not "affiliated" then likely also not "integrated

auxiliary." Colleges it will depend on whether they are integrated auxiliaries of a church and then they may not meet the internal support test. As 6103 attachment discusses, just because an entity is in a group ruling (for tax exemption) doesn't mean they are exempted from the requirement to file a 990. The 6103 group ruling has a wide variety of entities from churches to all kinds of schools to a printing/publications org to soup kitchens, elder care, catholic charities units, etc. Once the parent is exempt, the rules for tucking other entities under their exemption protective wing is fairly flexible then each one has to run through the question of the 990.

2. Would a free standing groups of schools like the 6103 file 990s? See link below.

   Cannot tell from the web site whether they are affiliated or whether they are run by a religious order. Sounds like they probably are but cannot tell.

3. The 6103 refers to "6103..." What does that mean? Can you give an example of this type of organization?

   Better specificity tomorrow, but think about a unit under a church's wing (not Goldman's or Fidelity) that manages the church's real estate and investments portfolio or manages the retirement fund that covers the ministers and employees these "inhouse" activities are inward-looking in role but often separated for reasons of liability or to attract the right skills/talent. Don't want the minister doing it but may want a specialist unit if a reasonable portfolio of assets. Occasionally, an

entity will really NOT be affiliated but just has a lot of church orgs in its client list not the same.

6103

Thank you,

Ellen

Supreme Court, U.S.
FILED
JAN 4 2016
OFFICE OF THE CLERK

NOS. 14-1418, 1453, 1505, 15-35, 105, 119, & -191

In the Supreme Court of the United States

DAVID A. ZUBIK, ET AL.
v.
SYLVIA BURWELL, ET AL.

PRIESTS FOR LIFE, ET AL.
v.
DEPARTMENT OF HEALTH & HUMAN SERVICES, ET AL.

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, ET AL.
v.
SYLVIA BURWELL, ET AL.

EAST TEXAS BAPTIST UNIVERSITY, ET AL.
v.
SYLVIA BURWELL, ET AL.

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, ET AL.
v.
SYLVIA BURWELL, ET AL.

SOUTHERN NAZARENE UNIVERSITY, ET AL.
v.
SYLVIA BURWELL, ET AL.

GENEVA COLLEGE
v.
SYLVIA BURWELL, ET AL.

On Writ of Certiorari to the U.S. Courts of Appeals for the Third, Fifth, Tenth and D.C. Circuits

JOINT APPENDIX VOLUME III OF III

PETITIONS FOR CERTIORARI FILED MAY 29, JUNE 9, JUNE 19, JULY 8, JULY 23, JULY 24, AUGUST 11, 2015
CERTIORARI GRANTED NOVEMBER 6, 2015
[Counsel listed on inside cover]

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TABLE OF CONTENTS

Page

VOLUME I

JOINT APPENDIX MATERIALS FOR NO. 14-1418

Docket Entries, *Zubik v. Sebelius*, No. 2:13-cv-01459 (W.D. Pa.) 1

Docket Entries, *Persico v. Sebelius*, No. 1:13-cv-00303 (W.D. Pa.) 15

Docket Entries, *Zubik v. Sebelius*, No. 14-1377 (3d Cir.) 27

Stipulation of Undisputed Facts 39

Deposition of Cardinal Timothy Dolan 68

Declaration of Susan Rauscher 74

Declaration of David S. Stewart 84

Declaration of Father Ronald Lengwin 92

Declaration of Father Scott Jabo 105

Declaration of Mary Maxwell 112

Declaration of David Murphy 121

Declaration of Father Scott Detisch 131

Additional Stipulated Facts 141

Excerpts from Transcript of Proceedings, Nov. 12, 2013 146

- Excerpts from Testimony of Bishop David A. Zubik 147
- Excerpts from Testimony of Susan Rauscher 158
- Excerpts of Testimony from Bishop Lawrence Persico 164
- Excerpts of Testimony from Father Scott Jabo 173
- Excerpts of Testimony from Mary Maxwell 178

Excerpts from Transcript of Proceedings, Nov. 13, 2013 185

JOINT APPENDIX MATERIALS FOR NO. 14-1453
Docket Entries, *Priests for Life v. U.S. Dep't Health & Human Servs.*, No. 1:13-cv-01261 (D.D.C.) 192
Docket Entries, *Priests for Life v. HHS*, No. 13-15368 (D.C. Cir.) 201
Declaration of Father Frank Pavone and Priests for Life 226
Declaration of Dr. Alveda King 272
Declaration of Janet Morana 280
Declaration of Robert J. Muise 288
Supplemental Declaration of Priests for Life 320
Supplemental Declaration of Robert J. Muise 324
JOINT APPENDIX MATERIALS FOR NO. 14-1505
Docket Entries, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 1:13-cv-01441 (D.D.C.) 339
Docket Entries, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 14-5021 (D.C. Cir.) .. 353
Excerpts from Complaint in *Roman Catholic Archbishop of Washington v. Sebelius*, No. 1:13-cv-01441 (D.D.C.) 358
Affidavit of the Archdiocese of Washington 359
Affidavit of the Consortium of Catholic Academies of the Archdiocese of Washington, Inc. 366
Affidavit of Archbishop Carroll High School 371
Affidavit of Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc. 376
Affidavit of Mary of Nazareth Roman Catholic Elementary School, Inc. 381
Affidavit of Catholic Charities of the Archdiocese of Washington 386
Affidavit of Victory Housing, Inc. 391

Affidavit of Catholic Information Center, Inc. 396
Affidavit of the Catholic University of America... 401
Affidavit of Thomas Aquinas College 407
Comments of the U.S. Conference of Bishops (Mar. 20, 2013)..... 412
Affidavit of Reverend Carter Griffin..... 451
Supplemental Affidavit of the Archdiocese of Washington..... 459
Supplemental Affidavit of the Consortium of Catholic Academies of the Archdiocese of Washington, Inc..... 463
Supplemental Affidavit of Archbishop Carroll High School..... 467
Supplemental Affidavit of Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc..... 471
Supplemental Affidavit of Mary of Nazareth Roman Catholic Elementary School, Inc..... 476
Supplemental Affidavit of Catholic Charities of the Archdiocese of Washington..... 480
Supplemental Affidavit of Victory Housing, Inc..... 484
Supplemental Affidavit of the Catholic Information Center, Inc. 488
Supplemental Affidavit of the Catholic University of America 492
Supplemental Affidavit of Thomas Aquinas College..... 494
Excerpts from District Court Motions Hearing (Nov. 22, 2013)..... 496
Comments of the Archdiocese of Washington (Apr. 4, 2013) 504
Excerpts from Institute of Medicine Report..... 539

VOLUME II
JOINT APPENDIX MATERIALS FOR NO. 15-35
Docket Entries, *East Texas Baptist University v. Sebelius*, No. 4:12-cv-03009 (S.D. Tex.) 586
Docket Entries, *East Texas Baptist University v. Burwell*, No. 14-20112 (5th Cir.) 603
Excerpts from First Amended Complaint in Intervention 636
Declaration of Samuel W Oliver 640
Excerpts from East Texas Baptist University Policy and Procedures Manual 660
East Texas Baptist University Application for Admission 667
Bylaws of East Texas Baptist University 672
Report of the Baptist Faith and Message Study Committee to the Southern Baptist Convention .. 677
East Texas Baptist University Student Handbook, 2013-2014 693
The Ethics and Religious Liberty Commission 697
East Texas Baptist University Healthcare Benefits Plan 703
Congressional Testimony of Samuel W Oliver 717
Letter from East Texas Baptist University to Kathleen Sebelius, Secretary Department of Health and Human Services 721
Supplemental Declaration of Samuel W Oliver .. 726
Declaration of Dr. Robert B. Sloan 730
Excerpts from Houston Baptist University Website 748
Houston Baptist University Student Handbook, 2012-2013 751
The Ten Pillars: A 12 Year Vision for the Future of Houston Baptist University 760
Summary Plan Information 764

Preventive Care Schedule 772
"*Your* GuideStone Financial Resources" Pamphlet 779
Guidestone, PPACA Overview 784
Supplemental Declaration of Robert B. Sloan 789
Declaration of Jeffrey K. Jue 795
Charter Excerpts 811
JOINT APPENDIX MATERIALS FOR NO. 15-105
Docket Entries, Little Sisters of the Poor Home for the Aged, Denver, Colorado v. Sebelius, No. 1:13-cv-02611 (D. Colo.) 818
Docket Entries, *Reaching Souls International Inc. v. Sebelius*, No. 5:13-cv-01092 (W.D. Okla.) .. 836
Docket Entries, *Little Sisters of the Poor v. Burwell*, No. 13-1540 (10th Cir.) 843
Docket Entries, *Reaching Souls International v. Burwell*, No. 14-6028 (10th Cir.) 872
HRSA Web Page 897
FDA contraceptive guide 903
Press Release, Kathleen Sebelius, Health and Human Services Secretary, Jan. 20, 2012 934
LSP Comment on Proposed Rulemaking (Apr. 8, 2013) 937
Statement of the Little Sisters of the Poor on the HHS Mandate (Mar. 1, 2012) 945
Little Sisters of the Poor Mission, Vision, and Values, 2012 952
Declaration of Adèle A. Keim 954
Screenshots of government grandfathered information 956
CMS.gov screenshots 969
Estimate of small employers in United States 973
Declaration of Mother Loraine Marie Clare Maguire 975

Declaration of Brother Michael Quirk 991
United States Conference of Catholic Bishops, Ethical & Religious Directives for Catholic Healthcare Services..... 1015
Government's Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction 1060
Supplemental Declaration of Mother Loraine Marie Clare Maguire..... 1085
Supplemental Declaration of Brother Michael Quirk..... 1092
Communication between White House and IRS re: Entities Eligible 1099

VOLUME III
Second Supplemental Declaration of Brother Michael Quirk (Nov. 22, 2013) 1107
Deposition of Gary M. Cohen 1110
Original EBSA Form 700 1113
Church Alliance Comments on Proposed Rulemaking 1117
Excerpt from Government Reply in Support of Motion to Dismiss or for Summary Judgment ... 1160
Excerpts of Transcript of Proceeding (Dec. 16, 2013) 1163
Declaration of Timothy E. Head 1171
Declaration of Joshua Wells 1190
Declaration of David Armstrong 1202
Declaration of Joseph Ormont 1215
Supplemental Declaration of Timothy E. Head 1223
JOINT APPENDIX MATERIALS FOR NO. 15-119
Docket Entries, *Southern Nazarene University v. Sebelius*, No. 5:13-cv-01015 (W.D. Okla.) 1286
Docket Entries, *Southern Nazarene University v. Burwell*, No. 14-6026 (10th Cir.) 1293
Excerpts from Complaint in *Southern Nazarene University v. Sebelius*, No. 5:13-cv-01015 (W.D. Okla.) 1312
Joint Stipulation of Facts 1313
JOINT APPENDIX MATERIALS FOR NO. 15-191
Docket Entries, *Geneva College v. Sebelius*, No. 2:12-cv-00207 (W.D. Pa.) 1326
Docket Entries, Geneva College v. Secretary U.S. Department of Health and Human Services, No. 14-6026 (3d Cir.) 1356
Second Amended Complaint 1376
Declaration of Timothy R. Baird 1394

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, a Colorado non-profit corporation, *et al.*, *Plaintiffs*, v. KATHLEEN SEBELIUS, *et al.* *Defendants.*	Civil No. 1:13-cv-02611 **SECOND SUPPLEMENTAL DECLARATION OF BROTHER MICHAEL QUIRK**

SECOND SUPPLEMENTAL DECLARATION OF BROTHER MICHAEL QUIRK

I, Brother Michael Quirk, FSC, do hereby state and declare as follows:

1. My name is Michael Quirk. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements here are true and correct, and they are based on my personal knowledge and/or a review of the business records of Christian Brothers Services and Christian Brothers Employee Benefit Trust (the "Christian Brothers Trust" or "Trust"). If I were called upon to testify to these facts, I could and would competently do so.

2. Express Scripts, Inc. ("ESI") provides on behalf of Christian Brothers Services certain administrative services in connection with pharmaceutical benefits under the Christian Brothers Trust. It is not clear to Plaintiffs whether ESI is a third party administrator under the Mandate for the Christian Brothers Trust. It is also not clear to Plaintiffs whether or not ESI will provide contraceptives to employees (and beneficiaries of such employees) of employers that have adopted the Christian Brothers Trust and provide ESI with a copy of a self-certification form pursuant to 26 U.S.C. § 54.9815-2713A before December 31, 2013, or thereafter.

3. This great uncertainty with how contraceptive coverage may be handled under the Christian Brothers Trust is a matter of immediate and urgent concern for Plaintiffs.

4. On April 8, 2013, the Church Alliance, an organization composed of the chief executives of thirty-eight church benefit boards, covering mainline and evangelical Protestant denominations, two branches of Judaism, and Catholic schools and institutions, including Christian Brothers Services, submitted a 20-page comment letter on the proposed regulations published at 78 Fed. Reg. 8456 et seq. (Feb. 6, 2013) detailing how the expanded definition of "religious employer" excluded bona fide religious organizations, and how the proposed accommodation for "eligible organizations" was unworkable, particularly for self-insured church plans like the Christian Brothers Employee Benefit Trust. A true and correct copy of the Church Alliance's comment letter is available at http://church-alliance.org/initiatives/comment-letters (last visited

September 23, 2013) and attached hereto as Exhibit A.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON NOVEMBER 22, 2013

/s/ Br. Michael Quirk
Br. Michael Quirk, FSC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, et al., Plaintiffs, vs. KATHLEEN SEBELIUS, et al., Defendants.	)	Case No.: 12-cv-02542 (BMC)

VIDEOTAPED DEPOSITION OF U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

By and Through Its Designee

GARY M. COHEN

Washington, D.C.

Tuesday, April 16, 2013

Reported by: John L. Harmonson, RPR

Job No. 59521

G. COHEN

April 16, 2013

10:07 a.m.

Videotaped Deposition of GARY M. COHEN, as designee of U.S. Department of Health and Human

Services, held at the offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C., pursuant to Notice, before John L. Harmonson, a Registered Professional Reporter and Notary Public of the District of Columbia.

* * *

[Page 33]

Q.

When did you start looking into the question of alternative means? When the rule was first issued back in August of 2010?

A. I think that we made a decision to seek out alternative means in the course of reviewing comments for the amended interim final rule. And by the time we published the final rule we had made that commitment that we would seek out alternative means. I don't know that we had begun trying to figure out what that means might be until subsequently.

Q. And why would—What was the evidentiary basis for the conclusion that individuals who work for entities like ArchCare and Catholic Health Services of Long Island are more likely not to object to the use of contraceptives and therefore are more likely to use contraceptives?

A. I think that conclusion was based on just logic and common sense on the one hand and, secondly, on the evidence that a very large majority—I've seen figures up to 95 percent of sexually active women in the United States use contraceptives at one point or another.

Q. So there was no evidence particular to those types of institutions?

A. No, I don't believe so.

* * *

EBSA FORM 700—CERTIFICATION

(To be used for plan years beginning on or after January 1, 2014)

This form is to be used to certify that the health coverage established or maintained or arranged by the organization listed below qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing, pursuant to 26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, and 45 CFR 147.131. Please fill out this form completely. This form must be completed by each eligible organization by the first day of the first plan year beginning on or after January 1, 2014, with respect to which the accommodation is to apply, and be made available for examination upon request. This form must be maintained on file for at least 6 years following the end of the last applicable plan year.	
Name of the objecting organization	
Name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization	
Mailing and email addresses and phone number for the individual listed above	
I certify that, on account of religious objections, the	

organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered; the organization is organized and operates as a nonprofit entity; and the organization holds itself out as a religious organization.

Note: An organization that offers coverage through the same group health plan as a religious employer (as defined in 45 CFR 147.131(a)) and/or an eligible organization (as defined in 26 CFR 54.9815-2713A(a); 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)), and that is part of the same controlled group of corporations as, or under common control with, such employer and/or organization (within the meaning of section 52(a) or (b) of the Internal Revenue Code), may certify that it holds itself out as a religious organization.

I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.

_____

Signature of the individual listed above

_____

Date

The organization or its plan must provide a copy of this certification to the plan's health insurance issuer (for insured health plans) or a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect

to the contraceptive coverage requirement.

Notice to Third Party Administrators of Self-Insured Health Plans

In the case of a group health plan that provides benefits on a self-insured basis, the provision of this certification to a third party administrator for the plan that will process claims for contraceptive coverage required under 26 CFR 54.9815-2713(a)(1)(iv) or 29 CFR 2590.715-2713(a)(1)(iv) constitutes notice to the third party administrator that the eligible organization:

(1) Will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services; and

(2) The obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A.

This certification is an instrument under which the plan is operated.

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1210-0150. Each organizations that seeks to be recognized as an eligible organization that qualifies for an accommodation with respect to the federal

requirement to cover certain contraceptive services without cost sharing is required to complete this self-certification from pursuant to 26 CFR 54.9815-2713A(a)(4) in order to obtain or retain the benefit of the exemption from covering certain contraceptive services. The self-certification must be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be retained for six years. The time required to complete this information collection is estimated to average 50 minutes per response, including the time to review instructions, gather the necessary data, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Labor, Employee Benefits Security Administration, Office of Policy and Research, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email *ebsa.opr@dol.gov* and reference the OMB Control Number 1210-0150.

Counsel: K&L Gates LLP
1601 K Street NW
Washington D.C. 20006
Tel (202) 778-9000
Fax (202) 778-9100

April 8, 2013

BY ELECTRONIC SUBMISSION

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking Regarding Preventive Services
CMS-9968-P
RIN 0938-AR42

Dear Sir or Madam:

The Church Alliance submits this comment in response to the notice of proposed rulemaking regarding preventive services ("NPRM") issued jointly by the Internal Revenue Service, the Department of Labor and the Department of Health and Human Services (HHS) (together, the "Departments") and published at 78 Fed. Reg. 8456 (Feb. 6, 2013). The Church Alliance commented twice previously on the topic of preventive services ("Earlier Comments"), first on the then interim final

rules published at 76 Fed. Reg. 46621 (Aug. 3, 2011) ("2011 Interim Final Rules"), and then on the advance notice of proposed rulemaking published at 77 Fed. Reg. 16501 (Mar. 21, 2012) ("ANPRM").[1]

Executive Summary

The Church Alliance appreciates the Departments' responsiveness and attentiveness to the Church Alliance's Earlier Comments in the NPRM to attempt to accommodate the religious beliefs of religious organizations. However, for the reasons explained below, the expanded definition of "religious employer" continues to exclude bona fide religious organizations, and the proposed accommodation for "eligible organizations" is unworkable, particularly for self-insured church plans. For these reasons the Church Alliance reiterates its suggestion in its Earlier Comments that the Departments abandon the employer-by-employer approach and adopt instead a broader plan-based exemption.

I. BACKGROUND ON THE CHURCH ALLIANCE

The Church Alliance is an organization composed of the chief executives of thirty-eight church benefit boards, covering mainline and evangelical Protestant denominations, two branches of Judaism, and Catholic schools and institutions. The Church Alliance members, listed on the left of this letterhead, provide medical coverage to approximately one

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[1] Copies of these Earlier Comments are available at http://church-alliance.org/initiatives/comment-letters (last visited April 3, 2013).

million participants (clergy and lay workers) serving over 155,000 churches, synagogues and affiliated organizations. These medical programs are defined as "church plans" under section 3(33) of the Employee Retirement Income Security Act of 1974 ("ERISA") and section 414(e) of the Internal Revenue Code (the "Code").

All of the members of the Church Alliance share the common view that a church or an employer associated with a church should not have to face the choice of violating its religious tenets and beliefs or violating the law in order to maintain a health care plan for its workers.[2] This is true even though most of the health care plans associated with the members of the Church Alliance do not impose any specific restrictions on contraception coverage. A few programs, reflecting the religious beliefs of the churches with which they are associated, exclude coverage for all contraceptives. Other programs whose associated churches do not object to contraception but hold fundamental convictions against abortion, exclude coverage for contraceptives that are or could be abortifacients, such as the so-called "morning-after pills" or "emergency contraceptives."

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[2] If a religious employer, large or small, sponsors a medical plan for its employees, but the plan does not provide required contraception coverage, Code section 4980D will impose an excise tax equal to $100/day for each covered individual denied such coverage. If a religious employer with an average of 50 or more full-time employees discontinues its plan to avoid violating its religious tenets and beliefs, it will be subject to a penalty under Code Section 4980H of $3,000/year for each full-time employee.

II. EXEMPTION IN THE FINAL REGULATIONS FOR "RELIGIOUS EMPLOYERS"

A. Exemption

In the NPRM, HHS proposed the addition of a new 45 C.F.R. §147.131(a), defining the term "religious employers", which will read as follows:

> § 147.131 Exemption and accommodations in connection with coverage of preventive health services.
>
> (a) *Religious employers.* In issuing guidelines under § 147.130(a)(1)(iv), the Health Resources and Services Administration may establish an exemption from such guidelines with respect to a group health plan established or maintained by a religious employer (and health insurance coverage provided in connection with a group health plan established or maintained by a religious employer) with respect to any requirement to cover contraceptive services under such guidelines. For purposes of this paragraph (a), a "religious employer" is an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (a)(3)(A)(iii) of the Internal Revenue Code of 1986, as amended.

B. Improved, But Further Improvement Necessary

The Church Alliance is grateful that the Departments considered and responded to comments received in response to the ANPRM, and that the criteria for the religious employer exemption have been amended by the Departments "to ensure that an

otherwise exempt employer plan is not disqualified because the employer's purposes extend beyond the inculcation of religious values or because the employer serves or hires people of different religious faiths."[3]

The elimination of the first three prongs of the definition for "religious employer" contained in the 2011 Interim Final Rules is a significant improvement. However, the exemption for "religious employers" continues to exclude bona fide religious organizations because it continues to reference statutory exemptions set out in Code sections 6033(a)(3)(A)(i) and (iii) that were crafted for another purpose – specifically, to exempt churches, their integrated auxiliaries, conventions or associations of churches and the exclusively religious activities of a religious order from the annual Form 990 filing requirement under Code section 6033.

As other commenters have noted, the Form 990 filing requirement – the requirement from which Code sections 6033(a)(3)(A)(i) and (iii) carve out exemptions – serves a two-fold purpose: it provides the IRS with information necessary to administer the tax laws, and it makes tax-exempt organizations financially accountable to the IRS and the general public. The initial purpose of this filing requirement, in 1943, was to monitor organizations that were using an unrelated business income "loophole", to determine whether and how they should be taxed.[4]

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[3] 78 Fed. Reg. at 8459.

[4] Gaffney, *Governmental Definition of Religion: The Rise and Fall of the IRS Regulations on an "Integrated Auxiliary of a Church"* 25 VAL. U.L. REV. 203, 211 (1991), *available at*

The exemptions from filing the annual Form 990 reflect congressional sensitivity to the church-state entanglement issues inherent in mandating financial reporting and accountability for churches and religious organizations.

The Form 990 filing exemptions, however, are unduly narrow when applied to exempt religious employers from the contraception coverage requirement. More importantly, they have no relevance whatsoever to church benefit plans (to which the contraception coverage requirement otherwise would apply), having been devised, as noted above, to serve an entirely different purpose.

The church-related organizations exempted by Code section 6033(a)(3)(A)(i) are described as "integrated auxiliaries." Since the Form 990 discloses an organization's income, it was logical to utilize a Form 990 filing exemption for integrated auxiliaries that is focused on the sources of the organizations' financial support.[5] However, basing an exemption from the contraception coverage requirement on the level of an employer's financial support from the church or convention or association of churches with which it is affiliated ignores the historic boundaries of churches and church conventions and effectively divides them into two categories of employers – those who are entitled to the exemption and those who are only entitled to the accommodation. This would be true despite the fact that they all share the same religious faith and beliefs with regard to the provision of

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http://scholar.valpo.edu/vulr/vol25/iss2/3/ (last visited Mar. 29, 2013).

[5] TD 8640, 1996-1 C.B. 289.

contraception coverage. There does not seem to be a rational basis for such a distinction.

As noted by the United States Conference of Catholic Bishops, the proposed test for deciding whether an organization is a "religious employer" bears no rational relationship to any legitimate governmental interest that the mandate or the exemption purports to advance.[6] The Form 990 filing exemptions, which have no relevance whatsoever to church welfare or benefit plans, were never intended to protect against a government requirement that may violate religious tenets and beliefs entitled to First Amendment protection. Additionally, the proposed exemption would run afoul of the Establishment Clause of the First Amendment because it would discriminate between various denominations depending on sources of financial support, which may depend on the denomination's polity (governance structure) or church members' affluence.[7]

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[6] *See*, comment by United States Conference of Catholic Bishops dated March 20, 2013, *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf (last visited Apr. 2, 2013).

[7] *See*, *Lutheran Social Service of Minnesota v. United States*, 758 F.2d 1283, 288 n.5 (8th Cir. 1985) ("We necessarily construe the word 'church' in section 6033 to include both organizational forms of churches with respect to "churches and their integrated auxiliaries." Any other construction of the phrase—i.e., if "church" were construed as meaning only hierarchical churches such as the Catholic Church—would result in an unconstitutional construction of the statute because favorable tax treatment would be accorded to hierarchical churches while being denied to congregational churches, in violation of the first amendment.").

We urge instead a plan-based exemption for all employers participating in "church plans" as defined in ERISA section 3(33) and Code section 414(e). As noted in our Earlier Comments, exemptions based on "church plan" status have been in place for years under a variety of federal laws, including ERISA, the Code and federal securities laws. Thus, a plan-based exemption would be much less likely to be challenged on the basis of constitutionality.

A plan-based exemption would simplify the administration of large denominational benefit plans. Some of these plans have hundreds, some even thousands, of small religious employers. The plans are typically administered by a benefits board that strives to make the communications to employers and covered participants uniform across the country. The plans often provide the same information about the benefits and procedures of the plan to all participants regardless of the type of participating employer for which they work. A plan-based exemption, discussed above, would allow these practices to continue in an efficient manner.

In the absence of a plan-based exemption, a few unintended consequences could result. First, the expenses that the benefit board would have to undertake to make the determination of which participating employers are eligible organizations, and the expenses of complying with the accommodation would be borne in part by each participating exempt religious employer. This would happen because the funds in multiple employer church plans are typically commingled among all participating employers in the plan. This unintentionally subjects some exempt religious

employers to the expenses, though small, of complying with the accommodation for eligible organizations.

Second, the administrative burden of an employer-by-employer determination may also drive multiple employer church plans away from eligible organizations. Some benefit boards may be so concerned about contraception coverage that they may terminate the coverage of participating eligible organizations in favor of having a plan that only covers exempt religious employers. This may leave participating eligible organizations, and their employees, worse off. Alternatively, the benefit board maintaining a multiple employer plan, out of concern for the participating exempt religious organizations, may pass the cost of complying with the accommodation for eligible organizations on to those eligible organizations. This may cause friction between participating employers (exempt religious employers versus eligible organizations) or may cause participating eligible organizations, perhaps long participating in the multiple employer church plan, to depart the plan due to the higher cost, or may cause them to be more attracted to coverage through outside commercial insurance providers.

C. Continued Omission of Bona Fide Religious Organizations

The exclusion in Code section 6033(a)(3)(A)(i) has been defined in regulations as covering "a church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in

paragraph (h) of this section)."[8] Other church-related organizations also are excluded from the Form 990 filing requirement, but may not be included within either section 6033(a)(3)(A)(i) or (iii). These organizations include:

- an educational organization (below college level) that is described in Code section 170(b)(1)(A)(i), that has a program of a general academic nature, and that is affiliated with a church or operated by a religious order,
- a mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in or directed at persons in foreign countries,
- an organization described in Code section 6033(a)(3)(C), which is a religious organization described in Code section 501(c)(3), other than a private foundation, the gross receipts of which in each taxable year are normally not more than $5,000,
- an organization described in Code section 501(c)(3), with gross receipts that are normally not more than $5,000 annually, and that is operated, supervised or controlled by or in connection with a religious organization described in section 6033(a)(3)(C)(i), and
- an organization exempt from filing Form 990 under the authority of Revenue Procedure 96-10, 1996-1 C.B. 577, which includes organizations operated, supervised or controlled by one or more churches, integrated

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[8] Treas. Reg. §1.6033-2(g)(1)(i).

> auxiliaries or conventions or associations of churches and that are engaged exclusively in financing, funding the activities of, or managing the funds of such organizations, or that maintain retirement insurance programs primarily for such organizations and their employees; and organizations engaged in financing, funding or managing assets used exclusively for religious activities that are operated, supervised or controlled by one or more religious orders.[9]

These additional exemptions were created because of First Amendment concerns about subjecting religious organizations to financial oversight by the IRS. To the extent the religious employer exemption to the contraception coverage mandate continues to be based on the Form 990 filing exemptions, these same First Amendment concerns also justify the extension of the religious employer exemption to the above categories of religious organizations.

D. Additional Clarity Needed

Integrated auxiliaries are exempted from the Form 990 requirement under Code section 6033(a)(3)(A)(i). However, the term "integrated auxiliary" is unclear and has been subject to much controversy over its history, including litigation.[10] While the current regulatory definition of the term "integrated

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[9] Many organizations within the categories listed above (as outside section 6033(a)(3)(A)(i) or (iii)) also may qualify as integrated auxiliaries, and the inclusion of a religious organization in any of these categories is not intended to imply that the organization is not an integrated auxiliary.

[10] *See*, footnote 4, *supra*.

auxiliary" is more objective and less controversial than the prior definition used for that term, the "internal support" test within that definition remains hazy. That definition states that an organization is internally supported, unless it both:

- offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an insubstantial portion of the cost); and
- normally receives more than fifty percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities and activities that are not unrelated trades or businesses.

The internal support test must be met for an organization to be considered an "integrated auxiliary." However, application of this test to some church-related organizations is unclear.

For some organizations, it is unclear whether their activities constitute an offer of sale and whether the receipts are from sales, such as when donations are requested in return for goods. At other times, it is unclear if items (especially in the case of intangible items) being "offered" are admissions, goods, services or facilities. And what is the "general public"? If the "offer" is being made to a very large church group that is open to the general public, is that an offer to the "general public"? Yet another question is whether contributions are received from a "public solicitation," when an appeal is made to the membership of a large church.

These questions on the definition of "integrated auxiliary" have existed for a number of years. However, in the near future, in addition to risking penalties for failure to file a Form 990 if the IRS deems an organization's interpretation of this term to be incorrect, the organization possibly may be subject to severe penalties for its "incorrect" interpretation, especially for those with self-insured plans, for which the requirements are still unclear.[11] So, for example, if the administrator of a large denominational benefit plan has determined that all employers participating in the plan are exempt religious employers, either as churches or integrated auxiliaries, and the IRS decides some of the employers are not exempt, severe penalties ($100 per day per participant) could be imposed for a plan's failure to meet the group health plan requirements imposed by section 2713 of the Public Health Service Act.[12] This seems especially severe when the test for exemption from the requirement is unrelated to the underlying requirement.

E. Comments Sought: Proposed Additional Exemption

In the Supplementary Information to the NPRM, the Departments proposed making the accommodation or the religious employer exemption available on an employer-by-employer basis and sought comments on this approach, including comments on alternative

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[11] *See*, footnote 2, *supra*.

[12] U.S. Congressional Research Service, Enforcement of the Preventive Health Care Services Requirements of the Patient Protection and Affordable Care Act (RL 7-5700; February 24, 2012), by Jennifer Staman and John Shimabukuro.

approaches. For the reasons discussed in its Earlier Comments, the Church Alliance again urges the Departments to extend the religious employer exemption to all employers that maintain or participate in "church plans", as defined in Code section 414(e). The Departments' continuing struggle with an employer-by-employer based approach highlights once again the utility of a plan-based approach. Among the reasons discussed were that focusing the exemption on benefit plans rather than employers avoids entanglement problems. Indeed, for nearly 40 years the Internal Revenue Service, the Department of Labor and courts have been making determinations as to whether plans were "church plans" within the meaning of Code section 414(e) without involving any prohibited entanglement in religious issues. In addition, the proposed plan-based exemption recognizes that in many churches the plan is not at an individual employer level but may be at a local, state, regional or even national level. Depending on a church's polity as determined by its theological beliefs, some religious employers are required to participate in a multiple employer church plan while others may elect to do so.

However, if the Departments are concerned that such an exemption would be too broad, the Departments could draft the exemption more narrowly so that if the church plan is established or maintained by a religious employer, and substantially all of the employers in the church plan are either religious employers or eligible organizations (or substantially all of the participants are employees of religious organizations or eligible employers), all employers in the church plan would be treated as religious

employers, exempt from the contraception coverage requirement. This approach would prevent the potential adverse consequence described in the Supplementary Information to the NPRM, which is the avoidance of the contraception coverage requirement by employers that are neither religious employers nor eligible organizations. At the same time, this approach would avoid the administrative challenges and possible governmental entanglement for the Departments or courts in determining whether religious organizations were religious enough to be categorized as religious employers or eligible organizations. In addition, this would allow one uniform set of benefits for plan participants and decrease the cost of plan administration for employees in church plans.

This approach would be narrower than an exemption based solely on Code section 414(e). It would result in some church plans being exempt (multiple employer church plans that only include employers that are closely tied to the church), while others, such as certain single employer church plans, not being exempt unless the individual employer satisfies the religious employer definition.

Applying the multiple employer church plan exemption in this manner would recognize the unique nature of multiple employer church plans, particularly the fact that such plans cover many houses of worship (often primarily covering clergy and employees at churches) but also cover some employers associated with the church that may not clearly be religious employers, but that clearly are eligible organizations.

III. ACCOMMODATION FOR "ELIGIBLE ORGANIZATIONS"

A. Definition of "Eligible Organization"

The NPRM requested comments on the proposed "accommodation" for "eligible organizations." Section 54.9815-2713A(a) of the Proposed Regulations defines an "eligible organization" as an organization that satisfies four requirements:

1. The organization opposes providing coverage for some or all of the required contraceptive services;
2. The organization is organized and operates as a nonprofit entity;
3. The organization holds itself out as being a religious organization; and
4. The organization self-certifies that it satisfies the requirements of paragraphs 1 through 3 and specifies the contraceptive services to which it objects.

The self-certification mechanism appears to operate so that an organization's determination that it is "religious" will not be challenged by regulators or others involved in the accommodation process. However, the Agencies noted that some commenters on the ANPRM urged the Departments to provide "enforcement mechanisms to monitor compliance with the criteria" for being an eligible organization.

If the Departments provide in final regulations that they will have oversight over accommodation eligibility, it will put them in the position of having to make determinations as to whether organizations are in fact "religious." Prior to the issuance of Revenue

Procedure 86-23 and the revision of the integrated auxiliary regulations in 1995, the Internal Revenue Service was required to determine if organizations were "exclusively religious." The presence of such a requirement in these regulations proved problematic and was litigated in *Lutheran Social Service of Minnesota v. United States*, 583 F Supp. 1298 (D.Minn. 1984), *rev'd* 758 F.2d 1283 (8th Cir. 1985), and *Tennessee Baptist Children's Homes, Inc. v. United States*, 604 F. Supp. 210 (M.D. Tenn. 1984), *aff'd*, 790 F.2d 534 (6th Cir. 1986). If such an enforcement approach is adopted, the Departments will also have to determine what it means for an organization to hold itself out as being religious. The NPRM does not provide any insight as to what would be required to constitute the required holding out.

The NPRM also requires that an organization be organized and operated as a nonprofit entity in order for the accommodation to be available. The Supplementary Information to the NPRM states that " an organization is not considered to be organized and operated as a nonprofit entity if its assets or income accrue to the benefit of private individuals or shareholders" – however, the NPRM does not tell us what standard should be used for making the "no private benefit" determination. The IRS has issued regulations and other guidance on the "no private inurement" requirement applicable to Code section 501(c)(3) organizations. The IRS and the courts have also developed a broader "no private benefit" rule, also applicable to such organizations. Are these the rules to be used to make the "no private benefit" determination for purposes of "eligible organization" status? And will even $1.00 of private

benefit cause the requirement not to be met? To the extent that the self-certification process is "self-policing," securing answers to these questions is perhaps not as urgent. However, if the Departments will be involved in oversight and enforcement of eligible organization status, the need for clear guidance on these questions becomes extremely important.

B. Application of the Accommodation

1. Insured Plans

In the case of an insured plan, the NPRM attempts to accommodate religious employers that object to providing contraception coverage by having the insurer providing group coverage assume the responsibility by providing individual insurance policies that provide contraception coverage to plan participants and beneficiaries without cost sharing. This proposed structure is thought to avoid conflicts for a religious employer because the employer would have "no role in contracting, arranging, paying or referring for this separate contraception coverage." 78 Fed. Reg. at 8463. However, for the reasons explained below, the NPRM fails to address the religious liberty concerns of religious organizations that object to providing contraception coverage on account of their religious beliefs. The NPRM still requires an objecting eligible organization to violate its religious beliefs by requiring it to play a substantial role in the provision of contraception coverage to its employees or pay a penalty.[13]

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[13] *See*, footnote 2, *supra*.

a. Eligible organizations will be paying for contraception coverage

Other commenters have noted that contraception coverage, like lunch, is not free. Since the eligible organizations (and plan participants in the case of contributory plans) are paying all the premiums, they must be paying for the contraception coverage. The Departments appear to be of the view that the group health insurers, not the eligible organizations or plan participants, will be providing the coverage, and that the insurers will do so because, when viewed together with the underlying group policy, the cost of contraception coverage will be less, or at least no more, than the cost of unplanned pregnancies. The Church Alliance remains skeptical about this assumption for the reasons set forth in its prior comments. However, even if true, religious organizations will still be paying for contraception coverage for the reasons set forth below.

First, the NPRM provides that the contraception coverage cannot be "reflected in the group health insurance premium." 78 Fed. Reg. at 8462. It follows therefore that the insurer will charge the eligible organization *more* for its group coverage because of the increased cost of unplanned pregnancies resulting from the omission of contraception coverage. Even if a group insurer could take the effect of individual contraception policies into account in setting the rates for an eligible organization's group policy,[14] the insurer will still charge more for

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[14] We express no comment on whether under applicable state insurance laws the insurer can consider the individual policies

the eligible group coverage it will be required to issue because of the increased cost of administering the individual policies (e.g., state policy approvals, separate mailings, printing costs, increased cost of coordinating benefits, etc.).

Second, even if one ignores the additional administrative costs and assumes that the contraception coverage is cost neutral, the coverage is neutral only in the short run. Since the terms of group health insurance contracts rarely exceed more than 12 months in duration, the "cost" to one insurer for contraception coverage will often be recouped, if at all, in a subsequent plan year by a different insurer in the form of reduced unplanned pregnancies. Insurers cannot be certain that their policies will be renewed. Accordingly, in setting the premiums for any year, they will discount the future benefit of the upfront cost of provided contraception coverage.

b. Employees of eligible organizations will be receiving contraception coverage by virtue of their employment

Due to the absence of cost sharing, employees of eligible organizations will be receiving contraception coverage by virtue of their employment for less – nothing, in fact – than they would have paid for the coverage elsewhere. For plans that are covered by

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in setting the rates for the group policies. State insurance regulators are, of course, concerned about insurers setting rates too high. However, they are also concerned about insurers setting rates too low since it could affect their solvency.

ERISA, this will cause the contraception coverage to be part of the group plan because the contraception coverage will be part of an employee benefit program "established or maintained by an employer." 29 U.S.C. §1002(1).

In an analogous situation, employers have been held to have contributed to the cost of an employee-pay-all plan, thus bringing the plan under ERISA, if the plan participants could not have obtained the same coverage elsewhere for the same cost, perhaps because of a group discount. See, *House v. Am. United Life Ins. Co.*, 499 F.3d 443, 449 (5th Cir. 2007); *Tannebaum v. Unum Life Ins. Co.*, 2006 WL 26710405 (E.D. Pa.); *McCann v. Unum Provident*, Civ. Action No. 11–3241 (MCC) (D.N.J. 2013); *Healy v. Minnesota Life Ins. Co.*, 2012 WL 566759 (W.D. Mo.); *Moore v. Life Ins. Co. of North America*, 708 F Supp. 2d 597 (N.D. W.V 2010); *Chatterton v. Cuna Mut. Ins. Society*, 2007 WL 4207395 (S.D. W.V.); *Brown v. Paul Revere Life Ins. Co.*, 2002 WL 1019021 (E.D. Pa.) ("Where an employer provides the employee benefits they cannot receive as individuals, it has contributed to an ERISA plan."); and *Kuehl v. Provident Life & Accident Ins. Co.*, 2000 U.S. Dist. LEXIS 21625, *10 (E.D. Wis. Apr. 20, 2000) (contribution exists where 10% discount available only to employees in group plans). But see, *Schwartz v. Provident Life & Acc. Ins. Co.*, 280 F. Supp. 2d 937 (D. Ariz. 2003) (discount in and of itself not sufficient to establish an employer plan under ERISA).

Similarly, Code section 4980B and ERISA section 601 generally require most employers with 20 or more employees that have or contribute to plans to provide COBRA continuation coverage if they maintain a

group health plan. Treasury Regulation §54.4980B-2 provides that "a group health plan is maintained by an employer ... even if the employer does not contribute to it if coverage under the plan would not be available at the same cost to an individual but for the individual's employment-related connection to the employer ...."

c. Eligible organizations will be facilitating the providing of contraception coverage

The NPRM provides that the contraception coverage provided through individual contraception policies will not be "offered by or through a group health plan." 78 Fed. Reg. at 8462. Insurers will automatically provide contraception coverage for plan participants and beneficiaries. 78 Fed. Reg. at 8463 ("The issuer would automatically enroll plan participants and beneficiaries in a separate individual health insurance policy that covers recommended contraceptive services.") However, eligible organizations remain free to determine who is eligible to participate in their group health plans. Accordingly, by determining who will be eligible to participate in their group health plans, eligible organizations will be effectively determining who receives an individual policy providing contraception coverage. For plans covered by ERISA, serving as such a gatekeeper has been held sufficient employer involvement to indicate the presence of an "employee benefit plan established or maintained...by an employer" which is therefore covered by ERISA. See, *Glass v. United Omaha Life Ins. Co.*, 33 F.3d 1341 (11th Cir. 1994); *Brundage – Peterson v. Compare*

Health Services Ins. Corp., 877 F.2d 509, 510-11 (7th Cir. 1989); and *Rengifo v. Hartford Life and Accident Ins. Co.*, Case No. 8:09-CV-1725-T 17MAP (M.D. FL 2010).

d. The NPRM will limit eligible organizations' choice of group health insurers

The NPRM provides that an insurance company issuing a group policy to an employer will provide to plan participants "contraception coverage under individual policies, certificates, or contracts of insurance (hereinafter referred to as individual health insurance policies)." 78 Fed. Reg. at 8462. The NPRM apparently assumes that an insurer that has issued a group health policy to an eligible organization can legally issue such "individual health insurance policies" to any plan participant. In some cases, an insurer cannot.

The NPRM notes that the individual contraception policies issued in connection with *self-insured* plans will be subject to all applicable state laws, including state insurance filing and rate review requirements. 78 Fed. Reg. at 8465. As explained below, individual contraception policies issued in connection with insured plans will be treated as individual policies and therefore involve the laws not only of the state in which the group policy will be issued, but each state in which a plan participant resides.[15]

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[15] Certificates of insurance are generally treated as evidence of coverage under a group plan. They do not expand the coverage provided under the group policy.

Although insurance involves interstate commerce, as the result of the federal McCarran-Ferguson Act, the right to regulate insurance companies has generally been relegated to the states. State insurance regulators are charged with overseeing the regulation of the insurance industry to ensure that insurers remain solvent, and that the rules and requirements enacted by the state legislature are complied with. The laws vary from state to state, but states generally require insurers doing business in a state to be licensed in a state.

In the case of group insurance, the insurance company frequently need only be licensed in the state in which the policy is issued. For example, Alabama's unauthorized insurers law does not apply to "[t]ransactions in [Alabama] involving group...insurance...where the master policy or contract was lawfully issued and delivered in a state in which the insurer was authorized to transact business." Ins. Code § 27-11-2(4). Other states have similar provisions. Thus, an insurance company can often issue a group health policy to an employer headquartered in one state even though the policy may cover employees residing in other states so long as the insurer is licensed in the state in which the employer is headquartered. However, that changes when an insurance company issues individual policies. Each state will require a company issuing individual policies to its residents to be licensed in that state. Accordingly, an insurer issuing a group policy to an eligible organization may not be able to issue individual contraception policies to each plan participant unless it is licensed in all the states in which plan participants reside and complies with the

insurance laws of all those states. In addition to state filing and rate review requirements, those laws could include requirements regarding (i) provider access; (ii) utilization reviews, grievance reviews/internal appeals, and external reviews; (iii) prompt payment of claims; (iv) mandated benefits; (v) small group rating requirements; and (vi) handling of complaints. If an eligible organization is satisfied with its current insurer, it should not have to change insurers to an insurer that can issue individual contraception policies in each state in which a plan participant or beneficiary resides. The group health insurance market is already concentrated. Effectively limiting eligible organizations to large insurers that are licensed in all states, or at least in all the states in which plan participants reside, would severely limit eligible organizations' choice of insurers.

2. Uninsured Plans

a. Alternative approaches for providing participants and beneficiaries in self-insured group health plans contraception coverage

The Departments have not yet issued regulations on contraception coverage for self-insured group health plans. However, in the Supplementary Information to the NPRM, the Departments described three "alternative approaches for providing participants and beneficiaries in self-insured group health plans established or maintained by eligible organizations

with contraception coverage at no additional cost, while protecting the eligible organizations from having to contract, arrange, pay, or refer for such coverage."

In the subsections that follow, the Church Alliance will comment on each of the three described approaches, particularly as they would apply to multiple employer church plans.

Under all three approaches, the Departments state that "if there is a third party administrator for the self-insured group health plan of the eligible organization, the eligible organization would provide the third party administrator with a copy of its self-certification." In addition, if "the plan uses a separate third party administrator for certain coverage, such as prescription drug coverage, the eligible organization would also provide a copy of its self-certification to the separate third party administrator" if the separate coverage includes coverage of any contraceptive service listed in the self-certification.

However, it is unclear, in the multiple employer church plan context, which entity would be considered the third party administrator, especially since the proposed regulations contain no definition of that term. With multiple employer church plans, the "denominational plan board"[16] may perform

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[16] The term "denominational plan board" is intended to mean an organization that is described in Code section 414(e)(3)(A) as "an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a

many of the administrative functions that would be performed by an independent third party administrator in a single employer plan context, and is a "third party" in the sense that it is not the employer or participant. So, in such situations, is the denominational plan board the third party administrator? If the denominational plan board is the third party administrator, none of the approaches appear workable, because of the required involvement by the third party administrator, which is an exempt religious employer.

If there is a claims administrator that processes health benefits claims for a multiple employer church plan, is that claims administrator the third party administrator? Does the answer change if a denominational plan board that performs much of the health plan administration utilizes multiple claims administrators, for multiple categories of claims that include contraceptive services (e.g. by type of benefit or claim (e.g., pharmaceutical or medical) or geographic area, including city)? Can the answer change from year to year, depending on the level of administration by the denominational church plan board versus the claims administrator in the year in question?

With each of the three approaches, an adjustment would be made in the user fees that otherwise would be charged by an FFE to the issuer providing the

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church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches."

contraception coverage.[17] However, it is unclear how this would be administered if a church health plan uses multiple third party administrators, especially if they are affiliated with different issuers or none of them is affiliated with an issuer. It also is unclear how any of the approaches would work if the third party administrator is located in a state without an FFE, and any issuer affiliated with that third party administrator also is located in that state. Due to state licensing regulations, these affiliations may be extremely limited and, at the least, will require interstate coordination, which may not be allowable under state licensing requirements. In addition, if the denominational plan board is the third party administrator, it is unlikely to be affiliated with an issuer.

(i) First Approach

Under this approach, a "third party administrator receiving the copy of the self-certification would have an economic incentive to voluntarily arrange for the separate individual health insurance policies for contraception coverage", because it would be compensated with a reasonable fee for automatically arranging for the contraception coverage. Under this approach, the Supplementary Information to the NPRM describes the third party administrator's role in "automatically arranging for the contraception

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[17] Because the FFE user fee adjustments do not begin until 2014, after the end of the temporary enforcement safe harbor for some plans pursuant to guidance issued by the Departments on February 10, 2012, and reissued on August 15, 2012, referred to in 78 Fed. Reg. at 8558 n. 6. The safe harbor should be extended to cover this gap period.

coverage" as "acting, not as the third party administrator to the self-insured plan of the eligible organization, but rather in its independent capacity apart from its capacity as the agent of the plan."

It is difficult to envision how the third party administrator could provide this service "automatically" because of its relationship to the eligible organization and its employees, but be acting "in its independent capacity." In addition, how, exactly, could this "automatic" arrangement occur without some involvement on the part of the eligible organization? The eligible organization, first, would be required to provide the third party administrator with a copy of its self-certification. However, without any further involvement, how would the third party administrator have contact information and other necessary information to provide the contraception coverage? Even if the third party administrator had contact information for all employees covered by a multiple employer church plan, how will it distinguish between employees of eligible organizations and employees of exempt religious employers, without identification of those employees by either the eligible organizations or the denominational church plan board? The Supplementary Information to the NPRM requires that individual contraception policies be provided to both plan participants and *beneficiaries*. In multiple employer church plans, how will the third party administrator know which beneficiaries are connected to eligible organizations and which are connected to exempt religious employers, without involvement of the eligible organizations or denominational church plan board? How will the

beneficiaries' addresses and other contact information be obtained? Since this coverage is only for women with reproductive capacity, how will those women be identified, and beginning at what age will the daughters of an eligible organization's employees begin receiving offers of this free coverage? How will the daughters' ages be determined so the offers of such coverage may be made? How will newly eligible employees and beneficiaries be identified, without the involvement of the eligible organization or denominational church plan board? How will employees and beneficiaries who no longer are eligible for such coverage be identified, or will the issuer need to rely on those individuals to report that they no longer are eligible for this free coverage (because of change of employer, change in hours, change in relationship to employee, etc.)? If the issuer must rely on such self-reporting by the individuals, the individuals will have little incentive to report they no longer are eligible for free coverage.

The Supplementary Information to the NPRM states that issuers providing contraception coverage "would be responsible for providing the notice of availability of such coverage to participants and beneficiaries in self-insured group health plans of eligible organizations", and that this notice would be provided directly to plan participants and beneficiaries by the issuer, generally annually. Again, for multiple employer church plans, it is difficult to imagine how these notices would be provided, without the involvement of the eligible organizations or denominational church plan board, due to practical issues like identifying who is entitled to such notices, and their addresses.

Then, what would prevent the third party administrator from aggressively marketing to those employees and beneficiaries not only contraception coverage, but other services and products, on which the administrator could profit, including other services and products that are objectionable to the eligible organization? When the employer or denominational plan board is involved in services provided, it can retain some oversight, but not when it has "no involvement."

Finally, contraceptive services are unlikely to fit neatly into discrete categories, unrelated to other health services that are covered by a self-insured plan. How will such payments be coordinated between the self-insured plan covering most health services and the third party administrator covering contraceptive services? How will employees and beneficiaries know which plan covers what? For multiple employer church plans with other similar types of coverage questions and coordination, the denominational church plan board resolves the issue.

(ii) Second Approach

Under this approach, coverage under the eligible organization's plan would comply with the requirement to provide contraception coverage *only* if the third party administrator automatically arranges for an issuer to assume sole responsibility for providing separate individual health insurance policies offering contraception coverage. The third party administrator would not be automatically providing products that are objectionable to the eligible organization (and church, in the case of a multiple employer church plan). However, the third

party administrator engaged by the eligible organization still would be arranging for such coverage. Ironically, if the third party administrator would fail to arrange for contraception coverage or the issuer would fail to provide such coverage, the eligible organization's plan coverage would fail to meet the requirements of section 2713 of the Public Health Service Act, which could subject the plan to severe penalties,[18] through inaction entirely outside the plan's control.

In addition, practical issues could arise with this approach, such as the necessity of individual participant and beneficiary information being provided to the issuer, privacy and security issues that could arise due to this second level of information transmission and questions about responsibility in the event of a breach involving this information. Also, with multiple employer church plans, participants employed by exempt religious employers and those employed by eligible organizations would need to be separated, with only information on the employees (and their beneficiaries) in the latter group being provided to the issuer. For a multiple employer church plan, difficulties are likely to be faced by a third party administrator being required to provide this on a nationwide basis, with separate issuers in different geographic locations, and no or possibly limited affiliation with any issuers. Many of the practical issues raised about the first approach also apply to this approach.

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[18] *See*, note 12, *supra*.

(iii) Third Approach

Under this approach, "the third party administrator, receiving the copy of the self-certification would be directly responsible for automatically arranging for contraception coverage for plan participants and beneficiaries." The "self-certification would have the effect of designating the third party administrator as the plan administrator under section 3(16) of ERISA solely for the purpose of fulfilling the requirement that the plan provide contraception coverage without cost sharing." This approach is likely to be objectionable to most third party administrators, because it places the legal responsibility for ensuring compliance with section 2713 of the Public Health Service Act solely on the third party administrator, which could have legal implications under ERISA's reporting, disclosure, claims processing and fiduciary provisions for both the third party administrator and the eligible organization.[19]

The Supplementary Information to the NPRM states that "there would be no obligation on a third party administrator to enter into or continue a third party administration contract with an eligible organization if the third party administrator were to object to having to carry out this responsibility." If this approach would be chosen by the Departments, eligible organizations may be faced suddenly with a lack of a third party administrator or suddenly increased fees charged by the third party administrator.

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[19] We assume that it was not the Departments' intent to subject to ERISA's requirements church plans that have not elected under Code section 410(d) to be covered by ERISA.

(iv) Problems with all three approaches

For any multiple employer church plan established or maintained by a religious employer, with only religious employers and eligible organizations as employers in the plan, all three of the approaches create a multitude of practical issues. Any of the approaches would force the denominational church plan board or the eligible organization to become involved in arranging for contraception coverage and would require continuous involvement in obtaining, sorting and transmitting information, and coordinating coverage. For these reasons and the reasons previously stated, the Church Alliance respectfully requests the exemption of all such multiple employer church plans from the contraception coverage requirement.

All these approaches create particular problems for church plans that are self-administered, and therefore have no third party administrator. The Departments noted in the Supplementary Information to the NPRM that "[n]o comments were submitted in response to the ANPRM on the extent to which there are plans without a third party administrator." 78 Fed. Reg. at 8464. The absence of comments does not mean there are no such plans, especially since there was no guidance issued defining what constitutes a third party administrator. The Church Alliance did comment that the third party administrator approach for self-insured plans would not accommodate the religious objections of self-insured church plans using an affiliated religious organization as an administrator. If a religious organization cannot provide contraception coverage without violating its religious

tenets and beliefs, neither can an affiliated religious organization.

Finally, perhaps the biggest question raised by the NPRM is whether insurance companies and third party administrators will in fact be willing to carry out the duties the Departments have assigned to them in the accommodation process, and in the manner contemplated by the NPRM. To date, there has been no indication that third party administrators will be willing to play such a role, nor has there be any firm indication that an insurance company or companies will be willing to provide a policy that only provides individual contraception coverage. Other commentators have pointed out that such a policy must be approved at the state level and would thus carry with it high administrative costs. It does not seem like an insurance company would be likely to approve a policy on which it will at best make only a small profit or, as some have suggested, lose money – and yet the entire structure of the NPRM seems to rest upon such an assumption – and on the assumption that third party administrators will also be willing to create an entirely new administration mechanism when they are not legally required to do so.

In addition to urging greater clarification of the three approaches for self-insured plans suggested in the NPRM, discussed above, the Church Alliance strongly suggests a plan-based approach to an exemption for self-insured plans of religious employers that are also self-administered, or are plans for which the third party administrator is itself a religious organization. Essentially, the only

workable solution for self-insured church plans of eligible organizations is a plan-based exemption.

C. Insured and Uninsured Plans Will be Forced to Facilitate Coverage for Abortions in Violation of Various Federal and State Laws

The NPRM continues the Departments' failure to recognize that for some religious organizations, having to provide coverage for contraceptives approved by the Food and Drug Administration, including so-called emergency contraceptives, such as ella (ulipristal acetate) and Plan B (levonorgestrel), requires the coverage of abortifacient drugs, thus violating: (i) the Weldon amendment; (ii) ACA; and (iii) various state insurance laws.

1. Weldon amendment

The Weldon amendment has been included in every federal appropriations law since 2004. Section 506 of the current Appropriations Act provides:

> (a) None of the funds appropriated in this [Consolidated Appropriations] Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion;
>
> (b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

In addition, Section 507(d) of the Act provides:

> None of the funds made available in this Act may be made available to a Federal agency

> or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.[20]

2. ACA Section 1303(b)(1)(A)

Section 1303(a)(1)(A) of ACA provides:

> Notwithstanding any other provision of this title ... (i) nothing in this title ... shall be construed to require a qualified health plan to provide coverage of [abortion services] as part of its essential health benefits for any plan year; and (ii) ... the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion services] as part of such benefits for the plan year.

3. State insurance laws

NPRM's requirement for the issuance of individual insurance policies providing coverage for abortifacient drugs without cost sharing conflicts with the laws of several states that prohibit the issuance or delivery of individual policies providing coverage for elective abortions unless a separate premium is charged for such coverage. Kansas law, for example, provides:

> Any individual or group health insurance policy delivered, issued for delivery,

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[20] Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 786, 1111.

> amended or renewed on or after July 1, 2011, shall exclude coverage for elective abortions, unless the procedure is necessary to preserve the life of the mother. Coverage for abortions may be obtained through an optional rider for which an additional premium is paid. The premium for the optional rider shall be calculated so that it fully covers the estimated cost of covering elective abortions per enrollee as determined on an average actuarial basis."[21]

These state laws are unaffected by the general preemption provision in the Public Health Service, 42 U.S.C. §300gg-23(a)(1). That section provides that the requirements of part A of title XXVII of that Act, which includes the preventive services requirement, are not to be:

> construed to supersede any provision of state law which establishes, implements, or

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[21] Kan. Stat. Ann. §40-2,190. *See also*, Ken. Rev. Stat. §304.5-160(1) ("No health insurance contracts, plans or policies delivered or issued for delivery in the state shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium."); *and* Mo. Ann. Code §376.805 ("No health insurance contracts, plans, or policies delivered or issued for delivery in the state shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium.") *and* R.I. Stat. §27-18-28 ("No health insurance contract, plan, or policy, delivered or issued for delivery in the state, shall provide coverage for induced abortions, except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy resulted from rape or incest, and except by an optional rider for which there must be paid an additional premium.").

> continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of [part A of title XXVII of the PHS Act].

However, these state insurance laws do not prevent the application of the mandate. Section 1303(c)(1) of ACA states that nothing in the Act preempts, or has any effect on, any State law regarding abortion coverage.

The Departments' are apparently of the view that emergency contraceptives are not abortifacients because the latest point at which they operate is to prevent implantation of a newly fertilized embryo in the uterus.[22] However, as the Departments know, some religions sincerely believe that life begins at conception. For organizations that are affiliated with these religions, emergency contraceptives that operate after fertilization are abortifacients.[23] The Departments should accommodate these beliefs. Just

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[22] *See, e.g.*, Kelly Wallace, Health and Human Services Secretary Kathleen Sebelius Tells iVillage "Historic" New Guidelines Cover Contraception, Not Abortion (Aug. 2, 2011), http://www.ivillage.com/kathleen-sebelius-guidelines-cover-contraception-not-abortion/4-a-369771 (last visited Mar. 28, 2013).

[23] There is some evidence that some emergency contraceptives operate *after* implantation. If so, they would be abortifacients even under the Departments' view.

as the "power to tax involves the power to destroy,"[24] so too does the power to define. Allowing religious organizations to define for themselves which contraceptives are abortifacients would be consistent with ACA section 1303(a)(1)(A) of ACA, which provides that "the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion services] as part of such benefits for the plan year."

Please contact the undersigned at 202-661-3882 if you have any questions or wish to discuss this matter further.

Sincerely,

Stephen H. Cooper
Government Affairs Counselor, K&L Gates
On Behalf of the Church Alliance

Chair:
Ms. Barbara A. Boigegrain

Secretary/Treasurer:
Ms. Sarah S. Hirsen, Esquire

General Board of Pension and Health Benefits of The United Methodist Church
1901 Chestnut Avenue
Glenview, Illinois 60025
(847) 866-4200

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[24] *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 431 (1819) (J. Marshall).

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Ms. Mary Kate Wold*
Episcopal Church

*** Steering Committee Members**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02611-WJM-BNB

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, et al.,

Plaintiffs,

v.

KATHLEEN SEBELIUS, et al.,

Defendants.

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Defendants made clear in their motion that the regulations plaintiffs challenge do not require the third-party administrator (TPA) of a self-insured church plan, like the Christian Brothers Employee Benefit Trust ("Trust"), to make payments for contraceptive services for participants and beneficiaries in the plan. Plaintiffs nonetheless argue that their religious exercise is substantially burdened by the regulations. It is worth reflecting on this claim. The Little Sisters Plaintiffs (and any other eligible organization that participates in the Trust) need only self-certify that they are non-profit religious organizations with a religious objection to providing contraceptive coverage—a statement that they have repeatedly made in this litigation and elsewhere and that is entirely consistent with their religious beliefs—to be relieved of that requirement. Furthermore, neither the Christian Brothers Plaintiffs nor any other TPA of the Trust will be

required to provide contraceptive coverage to plan participants and beneficiaries. And yet, somehow, plaintiffs contend not only that they are injured by this regulatory scheme—which they are not—but also that it amounts to a *substantial* burden on their religious exercise. This claim is simply implausible.

Plaintiffs' opposition confirms that they are fighting an invisible dragon. Plaintiffs assert that signing the self-certification authorizes their TPA to make payments for contraceptive services for participants and beneficiaries of the Trust. But it does no such thing. Because the Trust is a self-insured church plan, neither Christian Brothers Services nor any other TPA of the Trust is required by the regulations to make payments for contraceptive services for plan participants and beneficiaries. Plaintiffs, moreover, may inform Christian Brothers Services and any other TPA of the Trust that it is not required by the regulations to make such payments—although, as a plaintiff in this case, Christian Brothers Services is no doubt already aware of that fact. Indeed, Christian Brothers Services has made clear that it will not provide such payments, which, as explained, the regulations do not require it to do. Furthermore, the self-certification form explicitly states that, "on account of religious objections, the organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered." Ex. O, ECF No. 37-3. Plaintiffs therefore suffer no legally cognizable injury as a result of the challenged regulations and, in any event, state no valid legal claim. Accordingly, this case should be dismissed or summary judgment granted in favor of defendants.

REPLY CONCERNING UNDISPUTED FACTS

Pursuant to WJM Revised Practice Standards III.E.8.a, defendants reply to plaintiffs "Response to Defendants' Statement of Material Facts" as follows:

Plaintiffs assert, as a threshold matter, that defendants' motion to dismiss or, in the alternative, for summary judgment, should be converted entirely into a motion for summary judgment and then be deferred as premature. Opp'n at 38, ECF No. 42. But plaintiffs offer no compelling justification for their request. Defendants have moved to dismiss all of plaintiffs' claims for lack of jurisdiction and failure to state a claim upon which relief may be granted; defendants seek summary judgment only *in the alternative* and only "[t]o the extent the Court *must* consider the administrative record." Defs.' Mot. at 3, ECF No. 30 (emphasis added). Virtually all of defendants' arguments rely only on the pleadings, documents incorporated by reference into the complaint, and judicially noticeable matters—all of which the Court may consider in reviewing defendants' motion to dismiss. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *see also, e.g., O'Brien v. U.S. Dep't of Health & Human Servs.*,

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., TRUETT-MCCONNELL COLLEGE, INC., GUIDESTONE FINANCIAL RESOURCES OF THE SOUTHERN BAPTIST CONVENTION,,

Plaintiffs,

vs. Case No. CIV-13-1092-D

KATHLEEN SEBELIUS, SECRETARY OF U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, THOMAS E. PEREZ, SECRETARY OF U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF

LABOR, JACOB J. LEW, SECRETARY OF THE TREASURY, SECRETARY OF THE TREASURY,

Defendants.

* * * * * * *

TRANSCRIPT OF PROCEEDINGS HAD ON DECEMBER 16, 2013 BEFORE THE HONORABLE TIMOTHY D. DEGIUSTI U.S. DISTRICT JUDGE, PRESIDING

* * *

APPEARANCES

Mr. Mark Rienzi, Ms. Adèle Leim, and Mr. Daniel Blomberg, THE BECKET FUND, 3000 K St. NW, Suite 220, Washington, DC 20007-5153, appearing for the plaintiffs

Mr. J. Dillon Curran, CONNER & WINTERS, 1700 One Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102-7101, appearing for the plaintiffs

Mr. Carl C. Scherz and Mr. Seth M. Roberts, LOCKE LORD, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201, appearing for the plaintiffs

Mr. Benjamin L. Berwick, U.S. DEPARTMENT OF JUSTICE, 20 Massachusetts Avenue, Washing DC 20530, appearing for the defendants

* * *

[Page 92]

MR. BERWICK: That's correct, your Honor. Can I just say—

THE COURT: Well, aren't they—aren't the plaintiffs injured if any TPA decides to voluntarily comply even once?

MR. BERWICK: So if one of their—so the argument would be if one of their TPAs is voluntarily going to comply, that's an injury?

THE COURT: Yes.

MR. BERWICK: Well, so let me—I don't want to go back to standing if your Honor doesn't want to go there, but let me just say that I think that's a standing question—

THE COURT: Well, these are kind of—these are kind of interrelated.

MR. BERWICK: Well, they are, but in a way I think—I would argue, even if they have standing, they have to show more to show that they're substantial burdened. So let me address—

THE COURT: Well, hold on a second. If the equation is stated thusly, if you fill out this little piece of paper, nothing is going to happen, so this fear that you have—I think you described in your brief as—or in your reply brief—

MR. BERWICK: Uh-huh.

THE COURT:—as, you know, chasing the scarecrows or afraid of demons or something like that. What did you say?

MR. BERWICK: I think it was invisible dragons.

THE COURT: Invisible dragons. There you go. So this invisible dragon that they're scared of, there is nothing to it. But if providing that self-certification thereby empowers a TPA who chooses to voluntarily comply and provide these services and get reimbursed and make a profit, doesn't that equate to a substantial burden? Because the argument nothing happens, don't worry about it, it kind of goes away under those circumstances. Does it not?

MR. BERWICK: Well, so I think our standing argument—so I don't—I think that's a little bit a not correct characterization of our argument. Our argument is not nothing happens, at least for purposes of substantial burden.

For purposes of standing, our argument is it's entirely speculative that Highmark will provide this coverage. If it weren't speculative, if Highmark—and I would posit, as I said in the standing portion of the argument, that if you look at the declaration and the attachments to the declaration, it doesn't really say what plaintiffs claim it says. In other words, we don't know why—we don't know really to what extent Highmark is aware that they don't have to do it.

THE COURT: Yeah. But—

MR. BERWICK: And you don't know—

THE COURT:—but for purposes—excuse me.

MR. BERWICK: Sure.

THE COURT: For purposes of preliminary injunctive relief, the plaintiffs don't have to hang around until they're harmed. They don't have to say, you know, there's some level of theoretical speculation that a TPA out there might not

voluntarily comply and, therefore, we're just going to stick around and we're going to do the self-certification and we're just going to wait and see if somebody does. I mean, there is no requirement under the law. I mean, there has to be an imminent threat—

MR. BERWICK: Yes.

THE COURT:—of irreparable harm. It doesn't say—there is no requirement that they have to actually have been harmed.

MR. BERWICK: No. You're right. You're right. There is no requirement they actually have to have been harmed. But their harm has to be more than speculative.

THE COURT: Oh, I agree with you there.

MR. BERWICK: Just for standing purposes.

THE COURT: Yeah.

MR. BERWICK: So—

THE COURT: Well, for temporary injunction purposes, it has to be more than purely speculative.

MR. BERWICK: Yes. I agree with you. And I think our argument here, for standing purposes and for preliminary injunction purposes—let me separate them, because I think the arguments are a little different and I will explain why.

But for standing purposes, at least, we think what they have provided regarding Highmark is uncertain enough that it's still too speculative to satisfy the imminent injury requirement for purposes of standing.

THE COURT: Okay. Well, let's assume—

MR. BERWICK. And you disagree with that.

THE COURT: Let's assume that standing—

MR. BERWICK: Okay.

THE COURT:—is established.

MR. BERWICK: So for substantial burden purposes—so if—so, again, let's assume that Highmark says, yeah, we're going—we are going to do this and we are going to do it because—and, again, I don't understand this to be the case or I think it's totally unclear, but let's say they say we're going to do it because we want to take advantage of the benefits that—you know, the user fee reimbursement benefits that we would get. So there is a couple issues with that.

First of all, substantial burden—what plaintiffs' argument in that case would essentially be, that when we sign the self-certification, the consequences of signing that form is that a third party, our TPA, will do something that we don't want them to do. But this type of consequences-based objection does not—is not enough for substantial burden under RFRA.

THE COURT: Well, right now, as the situation exists, the plaintiffs know with a great degree of certainty, I would submit, that a TPA involved in their plan is not going to provide these services because they're contractually obligated to provide certain things and not others.

MR. BERWICK: Right.

THE COURT: So right now, under the status quo, they have that assurance. But if they self-certify, then are they not empowering a TPA—even if we accept the government's position that we don't have

the ability to enforce it, are they not empowering a TPA to provide these services and seek reimbursement?

MR. BERWICK: I think I take issue with the word "empowering." I will—I will concede that the TPA is eligible—once—if they receive the certification, they are eligible for reimbursement. They would not otherwise be eligible.

But that issue aside, the reimbursement issue aside, I don't think the self-certification really does anything beyond what would—the TPA would be allowed to do prior to these regulations. Because the government can't—so in the ordinary case where we are not talking about a self-insured church plan, once the employer signs a self-certification, the TPA is required to provide coverage.

By the way, we don't think even that is a substantial burden, and we've made that argument in quite a few cases around the country, because that is the case in—that is the situation in most of the cases the government has been arguing.

The—but in this case the—because the regulations do not require the TPA to provide a coverage, the relationship between the TPA and GuideStone is still governed by the contract between TPA and GuideStone.

So whether the TPA could voluntarily decide to provide contraceptive coverage to the employees of—members of the GuideStone plan, I think, is dependent on the contract between those entities and, thus, is no different than it was prior to the enactment of these regulations.

So, yes, the TPA, by virtue of receiving a self-certification, is now eligible to claim, essentially, a reimbursement for the cost, but that's sort of the only new piece here. As I explained before, that self-certification, for purposes of a self-insured ERISA plan, doesn't give the TPA any sort of new authority because the government, frankly, can't do that.

But, your Honor, let me say this. Even if it did, even if that—even if it did give the TPA new authority, even if it required the TPA to provide contraceptive coverage or, let's say, somehow gave them new authorization or new

* * *

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,

Plaintiffs,

v. Civil Action No. 5:13-CV-01092-D

KATHLEEN SEBELIUS, et al.

Defendants.

DECLARATION OF TIMOTHY E. HEAD

I, Timothy E. Head, do hereby state and declare as follows:

1. My name is Timothy E. Head. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true and correct and based on my personal knowledge or a review of the business records of GuideStone Financial Resources of the Southern Baptist Convention. If I were called upon to testify to these facts, I could and would competently do so.

2. I hold the position of Executive Officer – Denominational and Public Relations for GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone"). GuideStone serves the

retirement, health care and other benefit service needs of pastors, church staff members, missionaries, doctors, nurses, university professors and other workers of various Southern Baptist and evangelical Christian organizations.

3. I have served several Southern Baptist pastorates including as senior pastor of Cooper River Baptist Church in North Charleston, South Carolina, and Lighthouse Church in Mt. Pleasant, South Carolina. I earned a Bachelor of Arts in Political Science from Furman University, a Master's of Divinity from Southwestern Baptist Theological Seminary and a Doctor of Jurisprudence from the University of South Carolina School of Law. I served as a trustee of GuideStone prior to joining as an Executive Officer.

4. The Southern Baptist Convention formed GuideStone in 1918 (then called "The Board of Ministerial Relief and Annuities of the Southern Baptist Convention") to provide relief, support, benefits, and annuities for ministers of the gospel and denominational workers, "within the bounds" of the Southern Baptist Convention. In carrying out this mission, GuideStone has established a health benefits plan for and limited to current and former employees of organizations (and the employees' dependents) that are "controlled by or associated with" the Southern Baptist Convention (the "GuideStone Plan"). The GuideStone Plan is one of the largest "multiple employer" church health care plans in the country serving hundreds of employers (churches, denominational entities and other ministry organizations) and more than 78,000 participants (pastors, employees and their families).

5. Participation in the GuideStone Plan is limited to current and former employees (and the employees' dependents) of organizations that are "controlled by or associated with" the Southern Baptist Convention within the meaning of Internal Revenue Code ("Code") section 414(e)(3)(B).

6. The mission and ministry of GuideStone, as most recently set forth by the Southern Baptist Convention at its 2013 Annual Meeting, is as follows:

> GuideStone Financial Resources exists to assist the churches, denominational entities, and other evangelical ministry organizations by making available retirement plan services, life and health coverage, risk management programs, and personal and institutional investment programs.

7. GuideStone, in carrying out the mission and ministries assigned to it by the Southern Baptist Convention, established the GuideStone Plan for adoption by religious organizations associated with the Southern Baptist Convention.

8. The Southern Baptist Convention controls GuideStone by being its sole member and by having the sole authority to elect the members of the board of directors of GuideStone, which are generally referred to as "trustees."

9. The Guide Stone Plan is a "church plan" within the meaning of section 414(e) of the Code and is not subject to the Employee Retirement Income Security Act of 197 4 ("ERISA") because it has not made an election under section 410(d) of the Code.

10. The GuideStone Plan is a self-insured health plan. Therefore, the GuideStone Plan does not

contract with an insurance company to provide the health benefits provided by the GuideStone Plan. Connecticut General Life Insurance Company and Highmark Health Services have entered into agreements with GuideStone to provide certain claims administration and other services with respect to medical benefits under the GuideStone Plan. Express Scripts, Inc. has entered into a similar agreement with respect to pharmaceutical benefits. The plan year for the GuideStone Plan currently begins on January 1st of each year.

11. The Southern Baptist Convention, a Georgia nonprofit corporation, was organized in 1845 by "messengers from missionary societies, churches, and other religious bodies of the Baptist denomination." According to Article II of its Constitution, the Southern Baptist Convention was formed for the purpose of providing "a general organization for Baptists in the United States and its territories for the promotion of Christian missions at home and abroad and any other objects such as Christian education, benevolent enterprises, and social services which it may deem proper and advisable for the furtherance of the Kingdom of God."

12. Since its founding, the Southern Baptist Convention has grown into a national network of more than 45,000 churches and church-type missions with nearly 16 million members residing throughout the United States and its territories.

13. The Southern Baptist Convention does not control Southern Baptist churches. Rather, it serves as the coordinating body facilitating ministries which the churches voluntarily support.

14. Beginning with a landmark pro-life resolution in 1982, the Southern Baptist Convention at its annual meetings has passed Resolutions supporting the sanctity of life and condemning elective abortions in general and abortifacient drugs in particular. Additional relevant Resolutions adopted by the Southern Baptist Convention that are still in force provide as follows:

> 1988 – "we call upon all Southern Baptists to take an active stand in support of the sanctity of human life"
>
> 1991 – "we oppose the testing, approval, distribution, and marketing in America of new drugs and technologies which will make the practice of abortion more convenient and more widespread"
>
> 1993 – "we oppose the testing, approval, distribution, marketing and usage in the United States of any abortion pills and urge U.S. corporations which are considering such business ventures to refuse to do so"
>
> 1994 – "we condemn the blatant advocacy of RU 486 by the Clinton Administration, and oppose the testing, approval, manufacturing, marketing, and sale of the abortion pill in the United States"
>
> 2000 – "[we] reaffirm our abhorrence of elective abortion"

15. The *Baptist Faith and Message 2000* adopted by the Southern Baptist Convention is the statement of faith and message declared for the purpose of setting "forth certain teachings which we believe."

16. Article 15 of the *Baptist Faith and Message 2000*, which is titled, "The Christian and the Social Order," provides "[w]e should speak on behalf of the unborn and contend for the sanctity of all human life *from conception* to natural death" (emphasis added).

17 As a ministry of the Southern Baptist Convention, GuideStone shares the beliefs about the sanctity of human life stated in the Resolutions adopted by the Southern Baptist Convention in paragraph 25 and in the *Baptist Faith and Message 2000*.

18. Consistent with the convictions of the Southern Baptist Convention, the GuideStone Plan does not pay or reimburse expenses associated with drugs or devices that are abortive in nature.

19. Requiring GuideStone to intentionally facilitate the provision of abortifacient drugs and related education and counseling, as would be required by the Final Mandate, impinges GuideStone's deeply held religious beliefs.

20. Obeying the Final Mandate's requirement to participate in the provision of abortion-inducing drugs will impinge its public witness to the respect for life and human dignity that GuideStone is committed to displaying, as stated in the Resolutions adopted by the Southern Baptist Convention in paragraph 25 and in the *Baptist Faith and Message 2000*.

21. GuideStone should not be required to compromise its commitment to its Christian witness by being seen as involved in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk

leading others astray. Nor should GuideStone be required to compromise its sincerely held religious beliefs, because doing so would jeopardize the ministries of the class members whose operating revenue often includes substantial voluntary donations.

22. Because of the religious beliefs set forth above, being required to provide health benefits that will include access to and abortion-inducing drugs, devices and related counseling and education will infringe upon GuideStone's sincerely held religious beliefs.

23. Because of the religious beliefs set forth above, having the third party administrator(s) of the Guidestone Plan, with whom GuideStone has a contractual relationship, provide or arrange access by GuideStone Plan participants to abortion-inducing drugs, devices and related counseling and education will infringe upon GuideStone's sincerely held religious beliefs.

24. Because of the religious beliefs set forth above, being required to provide any information to facilitate the government-required certifications to a third party to require that third party to provide Plan participants or their employees with access to abortion-inducing drugs and devices will infringe upon GuideStone's sincerely held religious beliefs.

25. Because of the religious beliefs set forth above, GuideStone should not be forced to take any action that would assist the government in putting pressure on Plan participants to compromise their own religious beliefs in this regard. Requiring GuideStone to participate in the government's

placing pressure on Plan participants infringes GuideStone's religious beliefs.

26. Additionally, GuideStone is directed by its ministry assignment from the Southern Baptist Convention to "[a]ssist churches, denominational entities and other evangelical ministry organizations by making available ... health coverage."

27 GuideStone considers this assignment binding on how it carries out its religious ministry of providing health benefits to organizations controlled by or associated with the Southern Baptist Convention, that are consistent with their shared religious beliefs.

28. GuideStone understands the unique dynamics of organizations and institutions controlled by or associated with the Southern Baptist Convention, which are guided by and operated in accordance with Christian teachings about the sanctity of all human life. From my observation and constant interaction with GuideStone Plan employers, one of the many reasons employers choose to use the GuideStone Plan, which does not provide coverage for elective abortions or abortifacients, is because they share our religious beliefs and provide benefits accordingly.

29. It is my belief, based on the kinds of employers GuideStone allows to participate in the GuideStone Plan, that the proposed class members in this lawsuit—all of whom are controlled by or associated with the Southern Baptist Convention, and all of whom have chosen to provide health benefits through the Plan—likewise may not participate in the government's program without impinging their

religious beliefs. They are similarly committed to the religious teachings on abortion set forth above.

30. According to my review of the Complaint filed in this action, Plaintiffs Reaching Souls International, Inc. ("Reaching Souls"), and Truett-McConnell College, Inc. ("Truett-McConnell") bring this action on behalf of themselves and all others similarly situated. The class consists of employers that: (i) have adopted or in the future may adopt the GuideStone Plan to provide medical coverage for their "employees" or former employees and their dependents ("employees" for purposes of this requirement has the meaning set forth in Code section 414(e)(3)(B); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the Final Mandate (as hereinafter defined); and (iii) are not "religious employers" within the meaning of the Final Mandate. The class members are all are controlled by or associated with the Southern Baptist Convention and are guided by and operated in accordance with Christian teachings about the sanctity of all human life.

31. Based upon my understanding of the criteria under the Final Mandate as discussed in the Complaint in this action, GuideStone Plan employers currently include approximately 187 organizations, located in approximately 26 states, that are or could be reasonably construed to be "eligible organizations" under 45 C.F.R. § 147.13l(b)&(c) at 78 Fed. Reg. 39870, 39874. These organizations employ over 5,144 full-time employees. I estimate that 3,804 employees now work for employers in the GuideStone Plan that are large employers based upon GuideStone's records (i.e., that average 50 or more full time employees).

32. To a large extent, the class members are small non-profit organizations operating on limited budgets and devoted to religious ministries. I believe it would be impractical to have all of these class members joined in a single action in a distant locale taking away time and resources from their ministry, and having them incur the expense to do so; accordingly, we brought this action as a class action. Additionally, the proposed class includes unknown, future employers that join the GuideStone Plan at a later date or employers that currently qualify for the religious employer exemption as "integrated auxiliaries" of a church but later cease to be integrated auxiliaries. I believe that resolution of the claims of these class members in a single class action will provide substantial benefits to all parties.

33. The GuideStone Plan encompasses both exempt religious non-profit entities and non-exempt religious non-profit entities. The Complaint in this lawsuit has defined the class to only include the religious non-profit entities that could be construed as nonexempt "eligible organizations." These entities include organizations that might fall within the definition of "integrated auxiliaries" except for the fact that more than 50% of their funding comes from sources other than churches.

34. Under the Final Mandate, employers in the GuideStone Plan are faced with the impossible dilemma of (1) paying significant fines and providing their employees with health insurance that does not cover abortion-inducing drugs, devices and related counseling and education; or (2) eliminating their health insurance plans altogether and paying significant fines if they employ 50 or more employees.

35. Based on the penalties identified in the Complaint, if the GuideStone Plan continues to offer employee health insurance without the mandated items on January 1, 2014, each class member, regardless of its size, will be subject to a penalty beginning on January 1, 2014, of $100 per day "per affected individual." Thus, the non-exempt employers that have adopted the GuideStone Plan could incur penalties of approximately $514,400 per day – $187,756,000 per year – assuming 5,144 employees.

36. Additionally, it is my understanding, as alleged in the Complaint, that large employers (i.e., those with 50 or more employees) that cancel coverage altogether will be exposed to significant annual excise tax penalties of $2,000 per full-time employee starting on January 1, 2015. Consequently, if the non-exempt participants in the GuideStone Plan dropped their health coverage altogether, they would face annual penalties of more than $7,608,000 per year, based on estimates of 3,804 employers working with large employers (i.e., averaging 50 or more full time employees).

37. If the GuideStone Plan refuses to do anything that would facilitate coverage for contraceptives and related services, it would expose non-exempt "eligible organizations" that remain in the GuideStone Plan to financially ruinous penalties that could render them insolvent or foreclose their ability to provide health care coverage for their employees. Indeed, some class members will likely be forced to curtail or eliminate community and ministry programs.

38. If employer plan members discontinue participation in the GuideStone Plan and do not seek replacement coverage, GuideStone's ministry assignment from the Southern Baptist Convention to "[a]ssist churches, denominational entities and other evangelical ministry organizations by making available health coverage" will be compromised.

39. Similarly, by discontinuing all coverage, these employers will be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which will likely adversely impact their ministries. In my experience, a key factor to an employer's ability to retain existing employees and recruit new ones is the ability to offer and provide health benefits. Any uncertainty regarding these factors undermines the class members' ability to retain existing employees and recruit new ones.

40. If class members chose to compromise their beliefs by eliminating health care coverage for their employees altogether, they would likely need to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation. Otherwise, they face the prospect of a loss of employees.

41. Other employers who, unlike those participating in the GuideStone Plan, do not object to the Final Mandate on religious grounds do not face this dilemma. The Final Mandate, therefore, is currently placing GuideStone Plan participants at a competitive disadvantage in their ability to recruit new and existing employees relative to employers

who do not have religious objections to the Final Mandate.

42. If non-exempt "eligible organizations" in the GuideStone Plan were forced to drop coverage to avoid the provision of objectionable coverage, it would also have a substantial adverse financial impact on the GuideStone Plan and its remaining participating employers because there would be fewer participating employers to share the fixed costs of administration.

43. Similarly, the financial impact on GuideStone is substantial. For "eligible organizations" over 50 employees, GuideStone estimates losses of $27 ,804,821 in medical plan contributions for "eligible organizations" that may be forced to drop coverage, and losses of an additional $11,283,504 in medical plan contributions for "eligible organizations" *under* 50 employees that may be forced to drop coverage.

44. The Government's "accommodation" does not address GuideStone's fundamental religious objection to improperly facilitating access to the objectionable products and services. This arrangement still requires GuideStone to facilitate the provision of products and services antithetical to its beliefs, since the GuideStone Plan participants would only receive free abortifacients and related counseling by virtue of their participation in the GuideStone Plan provided through their employer.

45. In my opinion, the class members would be required to actively facilitate and promote the distribution of these services in ways that are forbidden by our Southern Baptist beliefs. The Final Mandate forces Plaintiffs to contract for, facilitate, or provide abortifacients and related education and

counseling in violation of their religious beliefs, by taking the following actions, among others:

- Establish a new, direct contractual relationship with the GuideStone Plan's third-party administrators for the specific purpose of providing abortifacient drugs and devices to their employees. The GuideStone Plan employs third-party administrators, but currently there is no direct contractual relationship between GuideStone's third-party administrators and individual employers like Reaching Souls and Truett-McConnell.
- By delivering a self-certification, Plaintiffs take action for which the ultimate result is to provide access to abortifacient coverage that is made possible through participation in their health plan.
- By delivering a self-certification, Plaintiffs facilitate the coverage at issue and GuideStone is included in the Government's construct to provide that coverage in opposition to Southern Baptist convictions through third party administrators with whom it has existing contractual relationships.
- Plaintiffs would have to coordinate with the third party administrator when they add or remove employees and beneficiaries from their health plan and, as a result, the Final Mandate's scheme.
- Plaintiffs would also have to coordinate with third party administrators to provide notice to plan participants and beneficiaries of the

abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan, under the auspices of the Plaintiffs self-funded plan. 78 Fed. Reg. at 39876. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. See 26 C.F.R. § 54.9815-2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b); published 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012). The Affordable Care Act requires that participants in a group health plan be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).

- If Plaintiffs must leave the GuideStone Plan to avoid penalties because the GuideStone Plan does not provide the mandated coverage, Plaintiffs would be required to: (i) select another insurer or third party administrator, who under the terms of the Mandate must be willing to provide for or arrange abortifacient coverage; (ii) negotiate an administrative services agreement with the third party administrator; and (iii) communicate the plan changes to their employees.

- The third party administrator would also be required to provide the abortifacient benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77. Thus, any payment or coverage dispute would presumably be resolved under the terms of the Plaintiffs' plan documents, making them complicit. By delivering a self-certification to the third party administrator of a self-insured plan, the designation makes the third party administrator a plan administrator with fiduciary duties under a Plaintiffs plan and payments for contraceptive and abortifacient services would be payments made under the auspices of the health plan. Similarly, litigation claims relating to or arising from this coverage could theoretically implicate the class action Plaintiffs and GuideStone as parties-for coverage that the Plaintiffs oppose.

46. The only way to provide effective relief for GuideStone and class members is to enjoin enforcement of the Final Mandate with respect to all non-exempt "eligible organizations" in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

47. In the past year, GuideStone has expended voluminous resources m studying, commenting on, and responding to every stage of the Final Mandate's administrative process. In addition, it has expended further resources in considering what must be done to comply with the Final Mandate.

48. GuideStone is now planning for the 2014 plan year. In addition to having the plan in place and funded by January 1, 2014, the Plaintiffs must coordinate regarding the structure and provision of coverage well in advance of January 1, 2014. This is a complex and time-consuming process and is presently underway as of the date of this declaration.

49. There is inadequate time to provide any changes in plan documentation to class members, including any Summary of Benefits and Coverage and notices of any material change in the Summary of Benefits and Coverage. A lapse in coverage will be disastrous for Plaintiffs' operations and for the employees and their families who depend on the GuideStone Plan for health care coverage.

50. I believe that the claims of the representatives Reaching Souls and Truett-McConnell are typical of the claims of the class in that all class members will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and Final Mandate given the shared and like-minded Christian religious beliefs regarding the sanctity of life and the obligation to speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. I believe that the factual bases of Defendants' actions are common to all class members in that the class members share in the same religious beliefs set forth above and, therefore, will suffer the same violation of rights by enforcement of the Final Mandate.

51. As the Complaint has defined the class, the class members are not eligible for the religious employer's exemption under the Final Mandate.

Thus, the Final Mandate forces all of the class members to choose between incurring severe financial hardship or violating their religious beliefs by taking steps to invoke the "accommodation." All of the class claims require a common finding by the Court as to whether the Final Mandate's accommodation and requirement that the class members facilitate access to abortifacient-related drugs and devices through their health plans violates their rights under the Religious Freedom Restoration Act and the First Amendment.

52. I believe that Reaching Souls and Truett-McConnell will fairly and adequately protect the interests of the Class. GuideStone, Reaching Souls, and Truett-McConnell have retained counsel with substantial experience in litigating class action cases and in litigating violations of religious and constitutional rights. GuideStone, Reaching Souls, Truett-McConnell, and their counsel are committed to prosecuting this action vigorously on behalf of the class members, and have the resources to do so. GuideStone is financially committed to assist Reaching Souls and Truett-McConnell in litigating this matter to conclusion on behalf of the class members. I do not believe that GuideStone, Reaching Souls, and Truett-McConnell have an interest adverse to those of the class members.

53. In this case, I believe that the prosecution of separate actions by individual class members creates a risk of inconsistent or varying adjudications with respect to Defendants, with respect to Defendants' enforcement of the Final Mandate, and with respect to individual members of the class. With an inconsistent application of the same federal

regulation, the courts may establish incompatible and controverting standards of conduct for Defendants. GuideStone would be subject to intense confusion of the applicability of the Final Mandate as to seemingly identical plan employers located in different forums. GuideStone would not know how to administer the health plan with certainty, and Defendants would not know how to enforce the Final Mandate with certainty.

54. I believe that all members of the class and GuideStone are entitled to an injunction prohibiting Defendants from enforcing the Final Mandate against them and from charging or assessing penalties against them for failure to offer or facilitate access to abortifacient contraceptives and related education and counseling. I believe that Plaintiffs and class members will suffer immediate injury if an injunction is not immediately issued, and any other remedies, such as monetary damages, are inadequate to prevent injury and fully compensate the class members and GuideStone from injury.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON OCTOBER 25, 2013

/s/ Timothy E. Head
Timothy E. Head

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,
Plaintiffs,

v.

Civil Action No. 5:13-CV-01092-D

KATHLEEN SEBELIUS, et al.
Defendants.

DECLARATION OF JOSHUA WELLS

I, Joshua Wells, do hereby state and declare as follows:

1. My name is Joshua Wells. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true and correct and based on my personal knowledge or a review of the business records of Reaching Souls International, Inc. ("Reaching Souls"). If I were called upon to testify to these facts, I could and would competently do so.

2. I am the Director of Development & General Counsel of Reaching Souls. I received a B.A. in English from Oklahoma Baptist University. I also graduated in 2008 from the Oklahoma City University College of Law where I was the Executive

Editor of the Law Review and a Research Assistant for the University General Counsel, J. William Conger. I am an attorney and a current member of the Oklahoma Bar and the bar of this Court.

3. Reaching Souls is an Oklahoma not for profit corporation founded in 1986 by a Southern Baptist minister and evangelist with the mission of "training Africans to reach Africa." Reaching Souls has since expanded its ministry to India and Cuba. Its principal officers, President, Chief Executive Officer, Chief Operating Officer and Chief Financial Officer, are all ordained Southern Baptist ministers and the majority of its staff are members of Southern Baptist Churches. Reaching Souls currently provides training and support for approximately 1,000 missionaries in seven nations in Africa, 10 missionaries in India, and 40 missionaries in Cuba. In response to the orphan crisis created by AIDS, war, and famine, Reaching Souls began an orphan care program called "Reaching Generations." Currently, Reaching Generations cares for nearly 500 orphans in Africa and India.

4. All of Reaching Souls' employees share its commitment to "obey our Lord Jesus Christ and His Word," including the command to respect the sanctity of human life from conception to natural death. Each job description provided to current and prospective employees of Reaching Souls requires that every individual holding a position at the ministry be a Christian, meaning they have a personal relationship with Jesus Christ. Further, it is formally stated in each job description provided that a person who follows Jesus Christ will follow His commands to: 1) love God with all their heart, soul, mind, and

strength; 2) love their neighbors as themselves; and 3) go and make disciples. Reaching Souls believes the Bible teaches that all people are our neighbors, including the unborn.

5. Reaching Souls' beliefs regarding the sanctity of life are consistent with and like-minded to The Southern Baptist Convention's position on the sanctity of life which provides that Southern Baptists should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.

6. As part of its religious belief that it must promote the spiritual and physical well-being of its employees, Reaching Souls provides its employees with comprehensive health benefits. Reaching Souls participates in the health benefits plan sponsored by GuideStone Financial Resources of the Southern Baptist Convention (the "GuideStone Plan") and has adopted the GuideStone Plan (as hereinafter defined) to provide health benefits for its employees in compliance with Reaching Souls' commitment to its employees' well-being and to the sanctity of human life. I am very familiar with the Reaching Souls health benefit plan through the GuideStone Plan, including enrollment. Consistent with the convictions of the Southern Baptist Convention, the GuideStone Plan does not pay or reimburse expenses associated with drugs or devices that are abortive in nature.

7 Because of the religious beliefs set forth above, being required to provide health benefits that will include access to and abortion-inducing drugs, devices and related counseling and education will

infringe upon Reaching Souls' sincerely held religious beliefs. Reaching Souls believes that it would impinge its religious beliefs if it were required to intentionally facilitate the provision of abortifacient drugs and related education and counseling, as would be required by the Final Mandate.

8. Because of the religious beliefs set forth above, being required to provide health benefits, by way of a third party administrator, that will include access to abortion-inducing drugs, devices and related counseling and education will infringe upon Reaching Souls' sincerely held religious beliefs.

9. Because of the religious beliefs set forth above, being required to provide any information to facilitate the government-required certifications to a third party to require that third party to provide employees with access to abortion-inducing drugs and devices will infringe upon Reaching Souls' sincerely held religious beliefs.

10. Reaching Souls should not be required to compromise its commitment to Christian witness by being seen to participate in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk leading others astray.

11. One of the reasons that Reaching Souls chose to use the GuideStone Plan is because it shares our religious beliefs and does not provide access to abortion health benefits.

12. Reaching Souls and Truett-McConnell College, Inc. ("Truett- McConnell ") bring this action on behalf of themselves and all others similarly situated. Their attorneys defined the class as employers that:

(i) have adopted or in the future adopt the GuidcStone Plan to provide medical coverage for their "employees" or former employees and their dependants ("employees" for purposes of this requirement has the meaning set forth in section 414(e)(3)(B) of the Internal Revenue Code of 1986 (the "Code"); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the Final Mandate (as hereinafter defined); and (iii) are not "religious employers" within the meaning of the Final Mandate. As like-minded organizations that hold to Southern Baptist convictions, it is my belief that the class members will be guided by and operated in accordance with Christian teachings about the sanctity of all human life.

13. Based on my understanding of the criteria under the Final Mandate as discussed in the Complaint in this action, if the GuideStone Plan continues to offer employee health insurance without the mandated items on January 1 2014, each class member, regardless-of.its size,-will be subject to a penalty beginning on January 1, 2014, of $100 per day "per affected individual." Reaching Souls currently has 10 full time employees covered under its health plan and would incur penalties of approximately $365,000 per year based on its current employee count, which would have a devastating and fatal impact on its operations. These penalties would limit Reaching Souls' ability to provide health care coverage for their employees or force it to curtail or eliminate community and ministry programs.

14. Nor can Reaching Souls avoid these fines by choosing not to provide health benefits at all. Culling off all benefits for our employees is repugnant. We

value and respect our employees and are dedicated to providing adequate health benefits. Cutting off all employee benefits would also have a severe negative impact on our employees and their families.

15. By discontinuing all coverage. Reaching Souls and class members would be placed at a severe competitive disadvantage in their efforts to hire and retain factor to an employer's ability to retain existing employees and recruit new ones is the ability to offer and provide health benefits. Benefits plans are an important reason that many employees make choices about which jobs to pursue, to keep, and to abandon. Any uncertainty regarding these factors undermines Reaching Souls and the class members' ability to retain existing employees and recruit new ones.

16. If Reaching Souls and class members chose to compromise their beliefs by eliminating their health care coverage for their employees altogether, they would likely need to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation. Otherwise, we face the prospect of a loss of employees.

17. By forcing Reaching Souls and other non-exempt "eligible organizations" to make the difficult decision to stay in the GuideStone Plan and incur massive penalties or to leave the GuideStone Plan either to avoid the penalties or to avoid providing contraception coverage because of their religious belief, the Final Mandate substantially burdens Reaching Souls and the class members' religious

exercise and ministry of providing health insurance benefits to employees. The Final Mandate imposes enormous pressure on Reaching Souls to participate in activities prohibited by our sincerely held religious beliefs.

18. The Government's "accommodation" does not address Reaching Souls' and other class members' fundamental religious objection to improperly facilitate access to the objectionable products and services. This arrangement still requires us to facilitate the provision of products and services antithetical to our beliefs, since employees would employees, which would adversely impact their ministries. In my experience, a key receive free abortifacients and related counseling only by virtue of their participation in our health plan.

19. Reaching Souls believes that the religious beliefs set forth above do not allow Reaching Souls and the class members as a matter of faith to participate in the government's program to promote and facilitate access to the use of abortion-inducing drugs and devices; provide health benefits to our employees that will include access to abortion-inducing drugs and devices; designate any third party to provide our employees with access to abortion-inducing drugs and devices; and make the government-required certifications to a third party to require that third party to provide our employees with access to abortion-inducing drugs.

20. Reaching Souls and the class members would be required to actively facilitate and promote the distribution of these services in ways that are forbidden by our Southern Baptist convictions. The

Final Mandate forces us to contract for, facilitate, or pay for the provision of abortifacients and related education and counseling in violation of our religious beliefs, by having to take one or more the following actions, among others:

- By delivering a self-certification. Plaintiffs take action for which the ultimate result is to provide access to abortifacient coverage that is made possible through participation in their health plan.
- By delivering a self-certification, Plaintiffs facilitate the coverage at issue and Reaching Souls is included in the Government's scheme to provide the coverage in opposition to Southern Baptist convictions through third party administrators.
- Plaintiffs are required to be involved in the process by identifying its employees to the third party administrator for the purpose of enabling the Final Mandate's scheme. Plaintiffs would have to coordinate with the third party administrator when they add or remove employees and beneficiaries from their health plans and, as a result, the Final Mandate's scheme.
- Plaintiffs would also have to coordinate with third party administrators to provide notice to plan participants and beneficiaries of the abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan, under the auspices of the Plaintiffs self-funded plan. 78 Fed. Reg. at

39876. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. *See* 26 C.F.R. § 54.9815-2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b); published 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012). The Affordable Care Act requires that participants in a group health plan be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).

- If Plaintiffs must leave the GuideStone Plan to avoid penalties because the GuideStone Plan does not provide the mandated coverage, Plaintiffs would be required to: (i) select another insurer or third party administrator willing to provide for or arrange abortifacient coverage; (ii) negotiate an administrative services agreement with the third party administrator; and (iii) communicate the plan changes to their employees.
- The third party administrator would also be required to provide the abortifacient benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 19876-77. Thus, any payment or coverage dispute would presumably be resolved under the terms of the Plaintiffs' plan documents, making them complicit. By delivering a self-certification to the third party administrator, the designation makes the third party administrator a plan

> administrator with fiduciary duties under a Plaintiff's plan and payments for contraceptive and abortifacient services would be payments made under the auspices of the health plan. Similarly, litigation claims relating to or arising from this coverage could theoretically implicate the class members and GuideStone as parties-for coverage that the Plaintiffs oppose!

21. The only way to provide effective relief for Reaching Souls and class members is to enjoin enforcement of the Final Mandate with respect to all class members in the GuideStone Plan; otherwise, they will be adversely affected by the application of the final Mandate to these organizations and its penalty provisions.

22. GuideStone is now planning for the 2014 plan year. Plaintiffs must coordinate regarding the structure and provision of coverage well in advance of January 1, 2014. A lapse in coverage will be disastrous for Reaching Souls' operations and for the employees and their families who depend on the GuideStone Plan for health care coverage.

23. I believe that the claims of Reaching Souls are typical of the claims of the class in that all class members will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and Final Mandate given the shared and likeminded Christian religious beliefs regarding the sanctity of life and the obligation to speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. I believe that the factual bases of Defendants' actions are common to

all class members in that the class members share in the same religious beliefs set forth above and, therefore, will suffer the same violation of rights by enforcement of the Final Mandate.

24. As the Complaint has defined the class, the class members are not eligible for the religious employer's exemption under the Final Mandate. Thus, the Final Mandate forces all of the class members to choose between incurring severe financial hardship or violating their religious beliefs by taking steps to invoke the "accommodation." All of the class claims require a common finding by the Court as to whether the Final Mandate's accommodation mid requirement that the class members provide abortifacient related health benefits in their health plans violates their rights under the Religious Freedom Restoration Act and the first Amendment.

25. I believe that Reaching Souls will fairly and adequately protect the interests of the Class. GuideStone, Reaching Souls, and Truett-McConnell have retained counsel with substantial experience in litigating class action cases and in litigating violations of religious and constitutional rights. GuideStone, Reaching Souls, Truett-McConnell, and their counsel are committed to prosecuting this action vigorously on behalf of the class members, and have the resources to do so. GuideStone is financially committed to assist Reaching Souls and Truett-McConnell in litigating this matter to conclusion on behalf of the class members. I do not believe that GuideStone, Reaching Souls, and Truett-McConnell have an interest adverse to those of the class members.

26. I believe that all members of the class and GuideStone are entitled to an injunction prohibiting Defendants from enforcing the Final Mandate against them and from charging or assessing penalties against them for failure to offer or facilitate access to abortifacient contraceptives and related education and counseling. I believe that the Reaching Souls and class members will suffer injury if an injunction is not issued because of the need to make a decision on our health plans before January I, 2014. Money damages awarded later would not be adequate to prevent injury and fully compensate us from injury because these decisions impact us now, will impact the benefits we can provide our employees now, and impact the services and ministry we can provide, now.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 10/24/2013

/s/ Joshua Wells
JOSHUA WELLS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,

Plaintiffs,

v.

Civil Action No. 5:13-CV-01092-D

KATHLEEN SEBELIUS, et al.

Defendants.

Declaration of David Armstrong

I, David Armstrong, do hereby state and declare as follows:

1. My name is David Armstrong. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true, correct, and based on my personal knowledge or a review of the business records of Truett-McConnell. If I were called upon to testify to these facts, I could and would competently do so.

2. I am the Vice President of Finance and Operations at Truett-McConnell College ("Truett-McConnell"). I received my undergraduate and master's degrees from Texas A & M. I also hold Master of Divinity and Master of Theology Degrees from Southeastern Baptist Theological Seminary. I

am currently a Doctor of Education Degree candidate from Southeastern Baptist Theological Seminary.

3. Truett-McConnell is a private, Christian, coeducational liberal arts college in Cleveland, Georgia. It is a single member, Georgia nonprofit corporation with the Georgia Baptist Convention as its sole member. As the sole member of Truett-McConnell, the Georgia Baptist Convention appoints the trustees of Truett-McConnell. The Georgia Baptist Convention is an association of Southern Baptist churches in the state of Georgia, and is one of the state conventions associated with the Southern Baptist Convention.

4. The Baptist Faith and Message 2000 adopted by the Southern Baptist Convention is the statement of faith and message declared for the purpose of setting "forth certain teachings which we believe." Article 15 of the Baptist Faith and Message 2000, which is titled, "The Christian and the Social Order," provides "[w]e should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death." (emphasis added).

5. Truett-McConnell has adopted the Southern Baptist Convention's Baptist Faith and Message 2000 as its own statement of faith and official doctrinal statement. Truett-McConnell displays it on its website under the heading "About Us." See http://www.truett.edu/abouttmc/baptist-faith-a-message.html (last visited Oct. 11, 2013). All of Truett-McConnell's faculty share its commitment to the sanctity of life from conception to natural death as outlined in the Baptist Faith and Message 2000. The Baptist Faith and Message 2000 is listed in the

Employee Handbook provided to all Truett-McConnell employees. Additionally, all full-time faculty have signed the document as part of their employment agreement since October 27, 2010. Further, all Truett-McConnell Trustees must be active members of Southern Baptist churches that are in active participation with the Georgia Baptist Convention. Therefore, Truett-McConnell believes that an abortion or other method that harms an embryo from the moment of conception/fertilization, ends a human life and is a sin.

6. As part of its religious belief that it must promote the spiritual and physical well-being of its employees, Truett-McConnell provides them with comprehensive health benefits.

7 Truett-McConnell participates in the health benefits plan sponsored by GuideStone Financial Resources of the Southern Baptist Convention (the "GuideStone Plan") and has adopted the GuideStone Plan to provide health benefits for its employees. Truett-McConnell has adopted the GuideStone Plan because it complies with Truett-McConnell 's religious commitment to its employees well-being and to the sanctity of human life.

8. Because of the religious beliefs set forth above, being required to provide health benefits that will include access to and abortion-inducing drugs, devices and related counseling and education will infringe upon Truett-McConnell's sincerely held religious beliefs. Truett-McConnell believes that it would impinge its religious beliefs if it were required to intentionally facilitate the provision of abortifacient drugs and related education and

counseling, as would be required by the Final Mandate.

9. Because of the religious beliefs set forth above, being required to provide health benefits, by way of a third party administrator, that will include access to abortion-inducing drugs, devices and related counseling and education will infringe upon Truett-McConnell 's sincerely held religious beliefs.

10. Because of the religious beliefs set forth above, being required to provide any information to facilitate the government-required certifications to a third party to require that third party to provide employees with access to abortion-inducing drugs and devices will infringe upon Truett-McConnell's sincerely held religious beliefs.

11. Truett-McConnell should not be required to compromise its commitment to Christian witness by being seen to participate in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk leading others astray.

12. One of the reasons that Truett-McConnell chose to use the GuideStone Plan is because it shares our religious beliefs and does not provide access to abortion health benefits.

13. Truett-McConnell brings this action on behalf of itself and all others similarly situated. Their attorneys defined the class as employers that: (i) have adopted or in the future adopt the GuideStone Plan to provide medical coverage for their "employees" or former employees and their dependents ("employees" for purposes of this requirement has the meaning set forth in section

414(e)(3)(B) of the Internal Revenue Code of 1986 (the "Code"); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the Final Mandate (as hereinafter defined); and (iii) are not "religious employers" within the meaning of the Final Mandate. As like-minded Baptist organizations, it is my belief that the class members will be guided by and operated in accordance with Christian teachings about the sanctity of all human life.

14. Based on my understanding of the criteria under the Final Mandate as discussed in the Complaint in this action, if the GuideStone Plan continues to offer employee health insurance without the mandated items on January 1, 2014, each class member, regardless of its size, will be subject to a penalty beginning on January 1, 2014, of $100 per day "per affected individual." Truett-McConnell currently has 78 full time employees covered under its health plan and would incur penalties of approximately $2,810,500 per year based on its current employee count, which would have a devastating impact on its operations. These penalties would limit Truett-McConnell's ability to operate.

15. Additionally, Based on my understanding of the criteria under the Final Mandate as discussed in the Complaint, large employers (i.e., those with 50 or more employees) that cancel coverage altogether will be exposed to significant annual excise tax penalties of $2,000 per full-time employee. Truett-McConnell has approximately 78 full time employees and would incur penalties of approximately $156,000 per year.

16. Nor can Truett-McConnell avoid these fines by choosing not to provide health benefits at all. Cutting off all benefits for our employees is repugnant. We value and respect our employees and are dedicated to providing adequate health benefits. Cutting off all employee benefits would also have a severe negative impact on our employees and their families.

17. By discontinuing all coverage, Truett-McConnell and class members would be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which would adversely impact their ministries. In my experience, a key factor to an employer's ability to retain existing employees and recruit new ones is the ability to offer and provide health benefits. Benefits plans are an important reason that many employees make choices about which jobs to pursue, to keep, and to abandon. Any uncertainty regarding these factors undermines Truett-McConnell and the class members' ability to retain existing employees and recruit new ones.

18. If Truett-McConnell and class members chose to compromise their beliefs by eliminating their health care coverage for their employees altogether, they would likely need to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation. Otherwise, we face the prospect of a loss of employees.

19. By forcing Truett-McConnell and other non-exempt "eligible organizations" to make the difficult decision to stay in the GuideStone Plan and incur massive penalties or to leave the GuideStone Plan

either to avoid the penalties or to avoid providing contraception coverage because of their religious belief, the Final Mandate substantially burdens Truett-McConnell and the class members' religious exercise and ministry of providing health insurance benefits to employees. The Final Mandate imposes enormous pressure on Truett-McConnell to participate in activities prohibited by our sincerely held religious beliefs.

20. The Government's "accommodation" does not address Truett-McConnell's and other class members' fundamental religious objection to improperly facilitating access to the objectionable products and services. This arrangement still requires us to facilitate the provision of products and services antithetical to our beliefs, since employees would receive free abortifacients and related counseling only by virtue of their participation in our health plan.

21. Truett-McConnell believes that the religious beliefs set forth above do not allow Truett-McConnell and the class members as a matter of faith to participate in the government's program to promote and facilitate access to the use of abortion-inducing drugs and devices; provide health benefits to our employees that will include access to abortion-inducing drugs and devices; designate any third party to provide our employees with access to abortion-inducing drugs and devices; and make the government-required certifications to a third party to require that third party to provide our employees with access to abortion-inducing drugs.

22. Truett-McConnell and the class members would be required to actively facilitate and promote the distribution of these services in ways that are forbidden by our Southern Baptist beliefs. The Final Mandate forces us to contract for, facilitate, or provide abortifacients and related education and counseling in violation of our religious beliefs, by having to take one or more the following actions, among others:

- By establishing a new, direct contractual relationship with the GuideStone Plan's third-party administrators for the specific purpose of providing abortifacient drugs and devices to their employees. The GuideStone Plan employs third-party administrators, but currently there is no direct contractual relationship between GuideStone's third-party administrators and Truett-McConnell.
- By delivering a self-certification, Plaintiffs take action for which the ultimate result is to provide access to abortifacient coverage that is made possible through participation in their health plan.
- By delivering a self-certification, Plaintiffs facilitate the coverage at issue and Truett-McConnell is included in the Government's scheme to provide the coverage in opposition to Southern Baptist convictions through third party administrators.
- Plaintiffs are required to be involved in the process by identifying its employees to the third party administrator for the purpose of enabling the Final Mandate's scheme.

- Plaintiffs would have to coordinate with the third party administrator when they add or remove employees and beneficiaries from their health plans and, as a result, the Final Mandate's scheme. Plaintiffs would also have to coordinate with third party administrators to provide notice to plan participants and beneficiaries of the abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan, under the auspices of the Plaintiffs self-funded plan. 78 Fed. Reg. at 39876. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. See 26 C.F.R. § 54.9815-2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b); published 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012). The Affordable Care Act requires that participants in a group health plan be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111 148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).
- If Plaintiffs must leave the GuideStone Plan to avoid penalties because the GuideStone Plan does not provide the mandated coverage, Plaintiffs would be required to: (i) select another insurer or third party administrator who, under the terms of the Mandate, must be willing to provide for or arrange abortifacient coverage; (ii) negotiate an administrative

services agreement with the third party administrator; and (iii) communicate the plan changes to their employees.

- The third party administrator would also be required to provide the abortifacient benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77. Thus, any payment or coverage dispute would presumably be resolved under the terms of the Plaintiffs' plan documents, making them complicit. By delivering a self-certification to the third party administrator of a self-insured plan, the designation makes the third party administrator a plan administrator with fiduciary duties under a Plaintiffs plan and payments for contraceptive and abortifacient services would be payments made under the auspices of the health plan. Similarly, litigation claims relating to or arising from this coverage could theoretically implicate the class members and GuideStone as parties-for coverage that the Plaintiffs oppose!

23. The only way to provide effective relief for Truett-McConnell and class members is to enjoin enforcement of the Final Mandate with respect to all class members in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

24. GuideStone is now planning for the 2014 plan year. Plaintiffs must coordinate regarding the structure and provision of coverage well in advance of January 1, 2014. A lapse in coverage will be disastrous for Truett-McConnell' operations and for

the employees and their families who depend on the GuideStone Plan for health care coverage.

25. I believe that the claims of Truett-McConnell are typical of the claims of the class in that all class members will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and Final Mandate given the shared and like-minded religious beliefs regarding the sanctity of life and the obligation to speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. I believe that the factual bases of Defendants' actions are common to all class members in that the class members share in the same religious beliefs set forth above and, therefore, will suffer the same violation of rights by enforcement of the Final Mandate.

26. As the Complaint has defined the class, the class members are not eligible for the religious employer's exemption under the Final Mandate. Thus, the Final Mandate forces all of the class members to choose between incurring severe financial hardship or violating their religious beliefs by taking steps to invoke the "accommodation." All of the class members require a finding by the Court as to whether the Final Mandate's accommodation and requirement that the class members facilitate access to abortifacient-related drugs and devices through their health plans violates their rights under the Religious Freedom Restoration Act and the First Amendment.

27. I believe that Truett-McConnell will fairly and adequately protect the interests of the Class. GuideStone, Reaching Souls, and Truett-McConnell

have retained counsel with substantial experience in litigating class action cases and in litigating violations of religious and constitutional rights. GuideStone, Reaching Souls, Truett-McConnell, and their counsel are committed to prosecuting this action vigorously on behalf of the class members, and have the resources to do so. GuideStone is financially committed to assist Reaching Souls and Truett-McConnell in litigating this matter to conclusion on behalf of the class members. I do not believe that GuideStone, Reaching Souls, and Truett-McConnell have an interest adverse to those of the class members.

28. I believe that all members of the class and GuideStone are entitled to an injunction prohibiting Defendants from enforcing the Final Mandate against them and from charging or assessing penalties against them for failure to offer or facilitate access to abortifacient contraceptives and related education and counseling. I believe that Truett-McConnell and class members will suffer injury if an injunction is not issued because of the need to make a decision on our health plans before January 1, 2014. Money damages awarded later would not be adequate to prevent injury and fully compensate us from injury because these decisions impact us now, will impact the benefits we can provide our employees now, and impact the services and ministry we can provide, now.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON October 25, 2013

/s/ David Armstrong
David Armstrong

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,

Plaintiffs,

v.

Civil Action No. 5:13-CV-01092-D

KATHLEEN SEBELIUS, et al.

Defendants.

Declaration of Joseph Ormont

I, Joseph Ormont, do hereby state and declare as follows:

1. My name is Joseph Ormont. I am of sound mind, and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true and correct and based on my personal knowledge or a review of the business records of GuideStone Financial Resources of the Southern Baptist Convention. If I were called upon to testify to these facts, I could and would competently do so.

2. I hold the position of Manager of Product and Vendor Service Management at GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone").

3. My job responsibilities include negotiating and communicating with GuideStone's Third Party Administrators ("TPA As") concerning the administration of the GuideStone Plan as well as the proposed "accommodation" imposed under the Final Mandate. Highmark Inc. ("Highmark") is a TPA for the GuideStone Plan.

4. Highmark outlined to me its intended procedure as a TPA to the GuideStone Plan in the event that it receives a self-certification from a GuideStone employer. Highmark indicated that, in the absence of an indemnification from GuideStone (to the extent legally permissible and enforceable), it will comply with the Final Mandate and provide contraceptive coverage for employees and beneficiaries of any GuideStone Plan "eligible organization" from which it receives a self-certification form. Highmark has chosen to take this action despite being made aware of the Defendants' new position in this litigation regarding the lack of enforceability of the Final Mandate against TPAs of self-funded non-ERISA church plans like Highmark. Attached as Exhibit A is a true and correct copy of an email I received from a Highmark representative and the attachment thereto setting forth Highmark's procedures.

5. The proposed handling of abortifacient coverage by Highmark is a matter of immediate and urgent concern for GuideStone and Plaintiffs. The mailing of notice of abortifacient coverage to female participants, including females as young as 10 years of age, along with the provision of that coverage is extremely disconcerting. Furthermore, the provision of indemnification and unlimited exposure and cost

associated with this coverage is an unacceptable and inappropriate burden to GuideStone and Plaintiffs for exercising their religious beliefs. Accordingly, GuideStone and Plaintiffs continue to need a judicial declaration and injunction from the Court finding that these regulations do not apply to them, their TPAs and eligible employers.

6. Exhibit A is part of GuideStone's business records. These business records are kept by GuideStone in the regular course of business. These business records were made as a regular practice and in the regular course of business at GuideStone. These business records were made at or near the time of the acts, events, conditions, opinions, and diagnoses appearing in them and made by-or from information transmitted by someone with knowledge of the facts. These business records were kept in the regular course of regularly conducted business activity at and of GuideStone. The records are the original or exact duplicates of the original received and maintained by GuideStone. I am a custodian of records of these GuideStone records attached to this declaration.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT DALLAS, TEXAS, ON NOVEMBER 25, 2013

/s/ Joseph Ormont
Joseph Ormont

Exhibit 1-A

From:	Christopher J <Christopher.Little @highmark.com>
Sent:	Wednesday, November 20, 2013 8:35 AM
To:	Joe Ormont
Cc:	Cipresse, Jarrod M
Subject:	Updated Process
Attachments:	AccommodationSelfCertification Form.pdf; GuideStoneEmp_Contraceptives_ process.docx

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Hi Joe-

Per our conversation yesterday, attached is the updated process guide. More specifically, we have adjusted step 2 to be a bit more streamlined.

Let us know if you have any questions.

Thanks!
Christopher Little, CEBS
Executive Client Manager
National Accounts
412-544-2581

412-544-2223 (fax)
christopher.little@highmark.com

This e-mail and any attachments to it are confidential and are intended solely for use of the individual or entity to whom they are addressed. If you have received this e-mail in error, please notify the sender immediately and then delete it. If you are not the intended recipient, you must not keep, use, disclose, copy or distribute this e-mail without the author's prior permission. The views expressed in this e-mail message do not necessarily represent the views of Highmark, its diversified business, or affiliates.

Exhibit A

GuideStone: Accommodation Process for Religious Employers

Pre Highmark step: In early December 2013, GuideStone will send out communication to all of their employers regarding the contraceptive mandate. Included in this letter, information will be provided notifying employers that it is solely their responsibility and obligation as an employer to determine whether they are religiously exempt from the mandate, or, if they meet the eligibility provisions to claim an accommodation. Employers that claim accommodation will need to self-certify directly with Highmark via step 1 below. The email address and telephone number within step 1 can be included in GuideStone's communication to their employers.

1) GuideStone covered employers/clients wishing to self-certify for the accommodation will do so via email to NationalCBA@highmark.com and can contact Jarrod Cipresse, Client Service Manager, directly at 412.544.0990 with any questions. If an employer fails to notify Highmark via email, the employer will assume to be Religiously Exempt as directed by Guidestone.

2) The employer will submit a completed Self Certification form that will contain the following information:

- Organization Name
- Organization Contact Information
- Employer Address
- Employer Payroll Location (if one does not exist today a new payroll location will need to be

established. The current process to establish payroll locations will be followed.)

3) Highmark will confirm the following information outlined above is in place for employers that have responded and elected to accommodate for contraceptives.

4) Once Highmark has all necessary information we will identify the female population ages 10-49 within the respective payroll location. These members will be moved into the unique medical contraceptive only line of business which will be activated upon notice from the member.

5) Highmark will mail letters to all applicable female members advising they should call the dedicated customer service unit at 1.866.472.0924 to request the contraceptive accommodation coverage.

6) Once contraceptive accommodation coverage has been requested, Highmark will activate the unique medical-contraceptive line of business, generating ID cards and insert for each eligible contract member. The new ID card will have a specialized Highmark customer service telephone number, 1.888.745.3214 specific to this contraceptive line of business.

7) Ongoing, nightly feeds will take place to determine if any changes in eligibility have taken place on the medical plan:

Identify any new female members who were activated on the medical plan who will need sent the contraceptive welcome letter.

- Monitor the active members within the accommodating groups to account for any female members that become eligible (age 10), or become ineligible (age 49), and add or remove

them from the contraceptive line of business as appropriate.

Identify any female members which have left the medical plan and will also need removed from the contraceptive line of business.

8) As Guidestone adds religious employers in the future, the above steps will need to be followed.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,

Plaintiffs,

v. Civil Action No. 5:13-CV-01092-D

KATHLEEN SEBELIUS, et al.

Defendants.

Supplemental Declaration of Timothy E. Head

I, Timothy E. Head, do hereby state and declare as follows:

1. My name is Timothy E. Head. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true and correct and based on my personal knowledge or a review of the business records of GuideStone Financial Resources of the Southern Baptist Convention. If I were called upon to testify to these facts, I could and would competently do so.

2. I hold the position of Executive Officer Denominational and Public Relations for GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone").

3. This supplemental declaration is in furtherance of my earlier declaration offered in support of the Plaintiffs' Motion for Preliminary Injunction and also in response to Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment and Memorandum in Support.

4. I understand that, after the Plaintiffs filed their Complaint and Motion for Preliminary Injunction in this action, the government has conceded that it lacks the authority "at this time" to force third party administrators ("TPAs") of a self-insured church health plan like the GuideStone Plan to make separate payments for contraceptive services under the Affordable Care Act's final rules and regulations (the "Mandate"). However, my understanding is that the government will still require member employers of the GuideStone Plan that are not exempt from the Mandate to execute and submit to the GuideStone Plan and/or its TPAs a prescribed self-certification form, pursuant to the "accommodation" created by the Final Rules.

5. The government's prescribed self-certification form is available at http://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf. I have reviewed the self-certification form. The government's new position does not change the religious objection to complying with the "accommodation" created under the Mandate for GuideStone and employer members of the GuideStone Plan.

6. On the back of the self-certification form, the government states that our employers or their plan "must provide a copy of this certification to ... a third

party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement."

7. Also, on the back of the form, there is a "Notice to Third Party Administrators of Self-Insured Health Plans," which states that the form "constitutes notice to the third party administrator that ... [t]he obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A," and that "[t]his certification is an instrument under which the plan is operated." By the express term of the form, the self-certification becomes an "instrument" under the GuideStone Plan for the purpose of facilitating the provision of abortifacient drugs and devices through the GuideStone Plan. It is also my understanding that these referenced regulations require that the third party administrator shall provide or arrange payments for the complained of abortifacients. 8. GuideStone's religious beliefs prohibit us from taking the following action on or after December 31, 2013: authorizing anyone to arrange for or make payments for abortifacients; taking action that triggers the provision of abortifacients; or taking action that is the but-for cause of the provision of abortifacients. It makes no difference whether those payments will take place now or next year. Under Southern Baptist religious principles, GuideStone objects to and cannot do the following:

- allow its plan, plan information, and contractual relationships with third-party administrators to be used as the vehicle for delivering abortifacients to the employees and

beneficiaries of GuideStone member employers, now or in the future;

- deliver the self-certification form to another organization that could then rely on it as an authorization to deliver these abortifacients to the employees and beneficiaries of GuideStone member employers, now or in the future;

agree to refrain from speaking to other organizations and instructing or asking them not to deliver abortifacients to the employees and beneficiaries of GuideStone member employers;

assist in the creation of a relationship (between plan beneficiaries and any third-party administrator), the sole purpose of which would be to provide abortifacients;

participate in a scheme, the sole purpose of which is to provide abortifacients to the employees and beneficiaries of GuideStone member employers. GuideStone believes that it would be immoral and sinful to intentionally facilitate the provision of abortifacients and related education and counseling, as it would be required to do by the Mandate.

9. Yet, from my review of the pleadings in this case, the government still requires GuideStone to do these things. Specifically, the government still wants the GuideStone Plan member employers who are "eligible organizations" to comply with its "accommodation" by filling out the self-certification form and delivering it to GuideStone or one of GuideStone's TPAs. If they do not, they will be charged substantial penalties. If they do, then the

GuideStone Plan will effectively be forced into the position of facilitating the provision of abortion-causing drugs and devices to the eligible organizations' employees, as described in paragraph below. The use of the GuideStone Plan to facilitate the "accommodation" impinges upon GuideStone's religious beliefs and substantially burdens its religious exercise.

10. Despite the government's new position, it is my understanding that regulations promulgated under the Affordable Care Act (the "Act") continue to require third party administrators to provide contraceptive coverage, providing that "if a third party administrator receives a copy of the [self] certification the third party administrator shall provide or arrange payments for contraceptive services." 29 C.F.R. § 2590.715-2713A(b)(2); 26 C.F.R. § 54.9815-2713A(b)(2). It is also my understanding that the preamble to these regulations explains, "[a] third party administrator that receives a copy of the self-certification must provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. 39,879, 39,880 (July 2, 2013). It is my understanding that there is no exception for church-plan TPAs in the regulations, and the regulations on their face appear to apply to all TPAs. Furthermore, the government has stated that it intends to enforce these regulations in the future, saying that it "continue[s] to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans."

11. Indeed, at least one of the GuideStone Plan's TPAs has told Guide Stone that, despite the position taken by the government that it cannot force the TPA A to comply, it will nonetheless provide abortifacient coverage under the Mandate for employees of any eligible organization for which it receives a self-certification form. Accordingly, GuideStone and Plaintiffs continue to need a judicial declaration and injunction from the Court finding that these regulations do not apply to them, their TPAs and eligible employers.

12. GuideStone considers it a violation of its sincerely held religious beliefs to act as a liaison between Guide Stone Plan employers and Guide Stone's TPAs under the Mandate to arrange for and facilitate the provision of abortifacients. Nevertheless, GuideStone's TPAs are requesting GuideStone's assistance in determining which participating employers in the GuideStone Plan are "eligible organizations" and therefore must comply with the accommodation's self-certification requirements. The TPAs are requesting that GuideStone identify eligible organizations for purpose of self-certification identification and in furtherance of the Mandate's abortifacient scheme. These requests have been made due to the requirement to implement the Mandate by January 1, 2014. However, GuideStone objects to being forced to facilitate and assist with the government's scheme against its religious beliefs. For this additional reason, GuideStone continues to need a judicial declaration and injunction from the Court finding that these regulations to not apply to the GuideStone Plan employers or Plaintiffs.

13. GuideStone is also concerned about the possibility that, by being forced into this untenable position, its conduct may lead others to do evil, or to think that GuideStone condones evil. Obeying the Final Mandate's requirement to participate in the provision of abortion-inducing drugs and IUDs impinges GuideStone's public witness to the respect for life and human dignity that GuideStone is committed to displaying, as stated in the Resolutions adopted by the Southern Baptist Convention in the Baptist Faith and Message 2000. GuideStone should not be required to compromise its commitment to its Christian witness by being seen as involved in the government's program. Doing so not only impinges its sincerely held religious beliefs, but also risks leading others astray.

14. Additionally, GuideStone is directed by its ministry assignment from the Southern Baptist Convention to "[a]ssist churches, denominational entities and other evangelical ministry organizations by making available ... health coverage." Even with the government's new position, "eligible organizations" participating in the GuideStone Plan are faced with an impossible dilemma. If they refuse to fill out the self-certification because of their religious objection, they face significant penalties. If they eliminate health coverage for their employees altogether to ensure that they are not required to participate in the government's scheme, they will be denied the opportunity to follow their religious beliefs concerning the health and welfare of their employees and also face significant penalties beginning in 2015 if they have more than 49 employees. By forcing non-exempt eligible organizations to make the difficult

decision to leave the GuideStone Plan to avoid the penalties or to avoid participating in the government's scheme because of their religious belief, the Mandate substantially burdens GuideStone's religious exercise and ministry of providing health coverage to like-minded organizations that have adopted the GuideStone Plan. The Mandate also requires GuideStone to choose between serving non-exempt ministry organizations and violating its beliefs regarding the sanctity of life. Declining to serve these likeminded organizations would not only prevent GuideStone from carrying out its religious mission, it would also have a substantial adverse financial impact on the GuideStone Plan and its remaining exempt employers because there would be fewer participating employers to share the fixed costs of administration. Thus, GuideStone continues to need a judicial declaration and injunction in this matter.

15. The only way to provide effective relief for GuideStone and class members is to enjoin enforcement of the Final Mandate with respect to all non-exempt "eligible organizations" in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

16. GuideStone is a member of the Church Alliance. The Church Alliance is an organization composed of the chief executives of thirty-eight church benefit boards, covering mainline and evangelical Protestant denominations, two branches of Judaism, and Catholic schools and institutions. On April 8, 2013, the Church Alliance submitted a 20-page comment letter on the NPRM, detailing how the

expanded definition of "religious employer" excluded bona fide religious organizations, and how the proposed accommodation for "eligible organizations" was unworkable, particularly for multiple employer self-insured church plans like the GuideStone Plan. A true and correct copy of the Church Alliance's comment letter submitted to the government is attached hereto and is also available at http://church-alliance.org/initiatives/comment-letters (last visited Nov. 22, 2013).

PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED IN DALLAS, TEXAS, ON NOVEMBER 26, 2013

/s/Timothy E. Head

Timothy E. Head

CHURCH ALLIANCE ACTING ON BEHALF OF CHURCH BENEFITS PROGRAMS

April 8, 2013

BY ELECTRONIC SUBMISSION

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking Regarding Preventive Services
CMS-9968-P
RIN 0938-AR42

Dear Sir or Madam:

The Church Alliance submits this comment in response to the notice of proposed rulemaking regarding preventive services ("NPRM") issued jointly by the Internal Revenue Service, the Department of Labor and the Department of Health and Human Services (HHS) (together, the "Departments") and published at 78 Fed. Reg. 8456 (Feb. 6, 2013). The Church Alliance commented twice previously on the topic of preventive services ("Earlier Comments"), first on the then interim final rules published at 76 Fed. Reg. 46621 (Aug. 3, 2011) ("2011 Interim Final Rules"), and then on the

advance notice of proposed rulemaking published at 77 Fed. Reg. 16501 (Mar. 21, 2012) ("ANPRM").[1]

Executive Summary

The Church Alliance appreciates the Departments' responsiveness and attentiveness to the Church Alliance's Earlier Comments in the NPRM to attempt to accommodate the religious beliefs of religious organizations. However, for the reasons explained below, the expanded definition of "religious employer" continues to exclude bona fide religious organizations, and the proposed accommodation for "eligible organizations" is unworkable, particularly for self-insured church plans. For these reasons the Church Alliance reiterates its suggestion in its Earlier Comments that the Departments abandon the employer-by-employer approach and adopt instead a broader plan-based exemption.

I. BACKGROUND ON THE CHURCH ALLIANCE

The Church Alliance is an organization composed of the chief executives of thirty-eight church benefit boards, covering mainline and evangelical Protestant denominations, two branches of Judaism, and Catholic schools and institutions. The Church Alliance members, listed on the left of this letterhead, provide medical coverage to approximately one million participants (clergy and lay workers) serving over 155,000 churches, synagogues and affiliated

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[1] Copies of these Earlier Comments are available at http://churchalliance.org/initiatives/comment-letters (last visited April 3, 2013).

organizations. These .medical programs are defined as "church plans" under section 3(33) of the Employee Retirement Income Security Act of 1974 ("ERISA") and section 414(e) of the Internal Revenue Code (the "Code").

All of the members of the Church Alliance share the common view that a church or an employer associated with a church should not have to face the choice of violating its religious tenets and beliefs or violating the law in order to maintain a health care plan for its workers.[2] This is true even though most of the health care plans associated with the members of the Church Alliance do not impose any specific restrictions on contraception coverage. A few programs, reflecting the religious beliefs of the churches with which they are associated, exclude coverage for all contraceptives. Other programs whose associated churches do not object to contraception but hold fundamental convictions against abortion, exclude coverage for contraceptives that are or could be abortifacients, such as the so-called "morning-after pills" or "emergency contraceptives."

II. EXEMPTION IN THE FINAL REGULATIONS FOR "RELIGIOUS EMPLOYERS"

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[2] If a religious employer, large or small, sponsors a medical plan for its employees, but the plan does not provide required contraception coverage, Code section 49800 will impose an excise tax equal to $100/day for each covered individual denied such coverage. If a religious employer with an average of 50 or more full-time employees discontinues its plan to avoid violating its religious tenets and beliefs, it will be subject to a penalty under Code Section 4980H of $3 ,000/year for each full-time employee.

A. Exemption

In the NPRM, HHS proposed the addition of a new 45 C.F.R. §147.13l(a), defining the term "religious employers", which will read as follows:

> § 147.131 Exemption and accommodations in connection with coverage of preventive health services.
>
> (a) Religious employers. In issuing guidelines under§ 147.130(a)(l)(iv), the Health Resources and Services Administration may establish an exemption from such guidelines with respect to a group health plan established or maintained by a religious employer (and health insurance coverage provided in connection with a group health plan established or maintained by a religious employer) with respect to any requirement to cover contraceptive services under such guidelines. For purposes of this paragraph (a), a "religious employer" is an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (a)(3)(A)(iii) of the Internal Revenue Code of 1986, as amended.

B. Improved, But Further Improvement Necessary

The Church Alliance is grateful that the Departments considered and responded to comments received in response to the ANPRM, and that the criteria for the religious employer exemption have been amended by the Departments "to ensure that an otherwise exempt employer plan is not disqualified because the employer's purposes extend beyond the

inculcation of religious values or because the employer serves or hires people of different religious faiths."[3]

The elimination of the first three prongs of the definition for "religious employer" contained in the 2011 Interim Final Rules is a significant improvement. However, the exemption for "religious employers" continues to exclude bona fide religious organizations because it continues to reference statutory exemptions set out in Code sections 6033(a)(3)(A)(i) and (iii) that were crafted for another purpose specifically, to exempt churches, their integrated auxiliaries, conventions or associations of churches and the exclusively religious activities of a religious order from the annual Form 990 filing requirement under Code section 6033.

As other commenters have noted, the Form 990 filing requirement the requirement from which Code sections 6033(a)(3)(A)(i) and (iii) carve out exemptions - serves a two-fold purpose: it provides the IRS with information necessary to administer the tax laws, and it makes tax-exempt organizations financially accountable to the IRS and the general public. The initial purpose of this filing requirement, in 1943, was to monitor organizations that were using an unrelated business income "loophole", to determine whether and how they should be taxed.[4]

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[3] 78 Fed. Reg. at 8459.

[4] Gaffney, *Governmental Definition of Religion: The Rise and Fall of the IRS Regulations on an "Integrated Auxiliary of a Church"*, 25 VAL. U. L. REV. 203, 211 (1991), *available at* http://scholar.valpo.edu/vulr/vol25/iss2/3/ (last visited Mar. 29, 2013).

The exemptions from filing the annual Form 990 reflect congressional sensitivity to the church-state entanglement issues inherent in mandating financial reporting and accountability for churches and religious organizations.

The Form 990 filing exemptions, however, are unduly narrow when applied to exempt religious employers from the contraception coverage requirement. More importantly, they have no relevance whatsoever to church benefit plans (to which the contraception coverage requirement otherwise would apply), having been devised, as noted above, to serve an entirely different purpose.

The church-related organizations exempted by Code section 6033(a)(3)(A)(i) are described as "integrated auxiliaries." Since the Form 990 discloses an organization's income, it was logical to utilize a Form 990 filing exemption for integrated auxiliaries that is focused on the sources of the organizations' financial support.[5] However, basing an exemption from the contraception coverage requirement on the level of an employer's financial support from the church or convention or association of churches with which it is affiliated ignores the historic boundaries of churches and church conventions and effectively divides them into two categories of employers—those who are entitled to the exemption and those who are only entitled to the accommodation. This would be true despite the fact that they all share the same religious faith and beliefs with regard to the provision of contraception coverage. There does not seem to be a rational basis for such a distinction.

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[5] TD 8640, 1996-1 C.B. 289.

As noted by the United States Conference of Catholic Bishops, the proposed test for deciding whether an organization is a "religious employer" bears no rational relationship to any legitimate governmental interest that the mandate or the exemption purports to advance.[6] The Form 990 filing exemptions, which have no relevance whatsoever to church welfare or benefit plans, were never intended to protect against a government requirement that may violate religious tenets and beliefs entitled to First Amendment protection. Additionally, the proposed exemption would run afoul of the Establishment Clause of the First Amendment because it would discriminate between various denominations depending on sources of financial support, which may depend on the denomination's polity (governance structure) or church members' affluence.[7]

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[6] *See*, comment by United States Conference of Catholic Bishops dated March 20, 2013, *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf (last visited Apr. 2, 2013).

[7] *See*, *Lutheran Social Service of Minnesota v. United States*, 758 F.2d 1283, 288 n.5 (8th Cir. 1985) ("We necessarily construe the word 'church' in section 6033 to include both organizational forms of churches with respect to "churches and their integrated auxiliaries." Any other construction of the phrase—i.e., if "church" were construed as meaning only hierarchical churches such as the Catholic Church—would result in an unconstitutional construction of the statute because favorable tax treatment would be accorded to hierarchical churches while being denied to congregational churches, in violation of the first amendment.").

We urge instead a plan-based exemption for all employers participating in "church plans" as defined in ERISA section 3(33) and Code section 414(e). As noted in our Earlier Comments, exemptions based on "church plan" status have been in place for years under a variety of federal laws, including ERISA, the Code and federal securities laws. Thus, a plan-based exemption would be much less likely to be challenged on the basis of constitutionality.

A plan-based exemption would simplify the administration of large denominational benefit plans. Some of these plans have hundreds, some even thousands, of small religious employers. The plans are typically administered by a benefits board that strives to make the communications to employers and covered participants uniform across the country. The plans often provide the same information about the benefits and procedures of the plan to all participants regardless of the type of participating employer for which they work. A plan-based exemption, discussed above, would allow these practices to continue in an efficient manner.

In the absence of a plan-based exemption, a few unintended consequences could result. First, the expenses that the benefit board would have to undertake to make the determination of which participating employers are eligible organizations, and the expenses of complying with the accommodation would be borne in part by each participating exempt religious employer. This would happen because the funds in multiple employer church plans are typically commingled among all participating employers in the plan. This unintentionally subjects some exempt religious

employers to the expenses, though small, of complying with the accommodation for eligible organizations.

Second, the administrative burden of an employer-by-employer determination may also drive multiple employer church plans away from eligible organizations. Some benefit boards may be so concerned about contraception coverage that they may terminate the coverage of participating eligible organizations in favor of having a plan that only covers exempt religious employers. This may leave participating eligible organizations, and their employees, worse off. Alternatively, the benefit board maintaining a multiple employer plan, out of concern for the participating exempt religious organizations, may pass the cost of complying with the accommodation for eligible organizations on to those eligible organizations. This may cause friction between participating employers (exempt religious employers versus eligible organizations) or may cause participating eligible organizations, perhaps long participating in the multiple employer church plan, to depart the plan due to the higher cost, or may cause them to be more attracted to coverage through outside commercial insurance providers.

C. Continued Omission of Bona Fide Religious Organizations

The exclusion in Code section 6033(a)(3)(A)(i) has been defined in regulations as covering "a church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in

paragraph (h) of this section)."[8] Other church-related organizations also are excluded from the Form 990 filing requirement, but may not be included within either section 6033(a)(3)(A)(i) or (iii). These organizations include:

- an educational organization (below college level) that is described in Code section I 70(b)(1)(A)(i), that has a program of a general academic nature, and that is affiliated with a church or operated by a religious order,
- a mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in or directed at persons in foreign countries,
- an organization described in Code section 6033(a)(3)(C), which is a religious organization described in Code section 50 I (c)(3), other than a private foundation, the gross receipts of which in each taxable year are normally not more than $5,000,

  an organization described in Code section 501(c)(3), with gross receipts that are normally not more than $5,000 annually, and that is operated, supervised or controlled by or in connection with a religious organization described in section 6033(a)(3)(C)(i), and

  an organization exempt from filing Form 990 under the authority of Revenue Procedure 96-10, 1996-1 C.B. 577, which includes organizations operated, supervised or controlled

[8] Treas. Reg. § 1.6033-2(g)(I)(i).

> by one or more churches, integrated auxiliaries *or conventions or associations of churches and* that are engaged exclusively in financing, funding the activities of, or managing the funds of such organizations, or that maintain retirement insurance programs primarily for *such organizations and their employees; and organizations engaged in financing, funding or* managing assets used exclusively for religious activities that are operated, supervised or controlled by one or more religious orders.[9]

These additional exemptions were created because of First Amendment concerns about subjecting religious organizations to financial oversight by the *IRS. To the extent the religious employer exemption to the contraception coverage mandate continues to* be based on the Form 990 filing exemptions, these same First Amendment concerns also justify the extension of the religious employer exemption to the above categories of religious organizations.

D. Additional Clarity Needed

Integrated auxiliaries are exempted from the Form 990 requirement under Code section 6033(a)(3)(A)(i). *However, the term "integrated auxiliary" is unclear and has been subject to much controversy over its* history, including litigation.[10] While the current

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[9] Many organizations within the categories listed above (as outside section 6033(a)(3)(A)(i) or (iii)) also may qualify as integrated auxiliaries, and the inclusion of a religious organization in any of these categories is not intended to imply that the organization is not an integrated auxiliary.

[10] *See*, footnote 4, *supra*.

regulatory definition of the term "integrated auxiliary" is more objective and less controversial than the prior definition used for that term, the "internal support" test within that definition remains hazy. That definition states that an organization is internally supported, unless it both:

- offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an insubstantial portion of the cost); and
- normally receives more than fifty percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities and activities that are not unrelated trades or businesses.

The internal support test must be met for an organization to be considered an "integrated auxiliary." However, application of this test to some church-related organizations is unclear.

For some organizations, it is unclear whether their activities constitute an offer of sale and whether the receipts are from sales, such as when donations are requested in return for goods. At other times, it is unclear if items (especially in the case of intangible items) being "offered" are admissions, goods, services or facilities. And what is the "general public"? If the "offer" is being made to a very large church group that is open to the general public, is that an offer to the "general public"? Yet another question is whether contributions are received from a "public solicitation,"

when an appeal is made to the membership of a large church.

These questions on the definition of "integrated auxiliary" have existed for a number of years. However, in the near future, in addition to risking penalties for failure to file a Form 990 if the IRS deems an organization's interpretation of this term to be incorrect, the organization possibly may be subject to severe penalties for its "incorrect" interpretation, especially for those with self-insured plans, for which the requirements are still unclear.[11] So, for example, if the administrator of a large denominational benefit plan has determined that all employers participating in the plan are exempt religious employers, either as churches or integrated auxiliaries, and the IRS decides some of the employers are not exempt, severe penalties ($100 per day per participant) could be imposed for a plan's failure to meet the group health plan requirements imposed by section 2713 of the Public Health Service Act.[12] This seems especially severe when the test for exemption from the requirement is unrelated to the underlying requirement.

E. Comments Sought: Proposed Additional Exemption

In the Supplementary Information to the NPRM, the Departments proposed making the

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[11] *See*, footnote 2, *supra*.

[12] U.S. Congressional Research Service, Enforcement of the Preventive Health Care Services Requirements of the Patient Protection and Affordable Care Act (RILL 7-5700; February 24, 2012), by Jennifer Staman and John Shimabukuro.

accommodation or the religious employer exemption available on an employer-by-employer basis and sought comments on this approach, including comments on alternative approaches. For the reasons discussed in its Earlier Comments, the Church Alliance again urges the Departments to extend the religious employer exemption to all employers that maintain or participate in "church plans", as defined in Code section 414(e). The Departments' continuing struggle with an employer-by-employer based approach highlights once again the utility of a plan-based approach. Among the reasons discussed were that focusing the exemption on benefit plans rather than employers avoids entanglement problems. Indeed, for nearly 40 years the Internal Revenue Service, the Department of Labor and courts have been making determinations as to whether plans were "church plans" within the meaning of Code section 414(e) without involving any prohibited entanglement in religious issues. In addition, the proposed plan-based exemption recognizes that in many churches the plan is not at an individual employer level but may be at a local, state, regional or even national level. Depending on a church's polity as determined by its theological beliefs, some religious employers are required to participate in a multiple employer church plan while others may elect to do so.

However, if the Departments are concerned that such an exemption would be too broad, the Departments could draft the exemption more narrowly so that if the church plan is established or maintained by a religious employer, and substantially all of the employers in the church plan

are either religious employers or eligible organizations (or substantially all of the participants are employees of religious organizations or eligible employers), all employers in the church plan would be treated as religious employers, exempt from the contraception coverage requirement. This approach would prevent the potential adverse consequence described in the Supplementary Information to the NPRM, which is the avoidance of the contraception coverage requirement by employers that are neither religious employers nor eligible organizations. At the same time, this approach would avoid the administrative challenges and possible governmental entanglement for the Departments or courts in determining whether religious organizations were religious enough to be categorized as religious employers or eligible organizations. In addition, this would allow one uniform set of benefits for plan participants and decrease the cost of plan administration for employees in church plans.

This approach would be narrower than an exemption based solely on Code section 414(e). It would result in some church plans being exempt (multiple employer church plans that only include employers that are closely tied to the church), while others, such as certain single employer church plans, not being exempt unless the individual employer satisfies the religious employer definition.

Applying the multiple employer church plan exemption in this manner would recognize the unique nature of multiple employer church plans, particularly the fact that such plans cover many houses of worship (often primarily covering clergy and employees at churches) but also cover some

employers associated with the church that may not clearly be religious employers, but that clearly are eligible organizations.

III. ACCOMMODATION FOR "ELIGIBLE ORGANIZATIONS"

A. Definition of "Eligible Organization"

The NPRM requested comments on the proposed "accommodation" for "eligible organizations." Section 54.9815-2713A(a) of the Proposed Regulations defines an "eligible organization" as an organization that satisfies four requirements:

1. The organization opposes providing coverage for some or all of the required contraceptive services;
2. The organization is organized and operates as a nonprofit entity;
3. The organization holds itself out as being a religious organization; and
4. The organization self-certifies that it satisfies the requirements of paragraphs through 3 and specifies the contraceptive services to which it objects.

The self-certification mechanism appears to operate so that an organization's determination that it is "religious" will not be challenged by regulators or others involved in the accommodation process. However, the Agencies noted that some commenters on the ANPRM urged the Departments to provide "enforcement mechanisms to monitor compliance with the criteria" for being an eligible organization.

If the Departments provide in final regulations that they will have oversight over accommodation eligibility, it will put them in the position of having to make determinations as to whether organizations are in fact "religious." Prior to the issuance of Revenue Procedure 86-23 and the revision of the integrated auxiliary regulations in 1995, the Internal Revenue Service was required to determine if organizations were "exclusively religious." The presence of such a requirement in these regulations proved problematic and was litigated in *Lutheran Social Service of Minnesota v. United States*, 583 F. Supp. 1298 (D. Minn. 1984), *rev'd* 758 F.2d 1283 (8th Cir. 1985), and *Tennessee Baptist Children's Homes, Inc. v. United States*, 604 F. Supp. 210 (M.D. Tenn. 1984), aff'd, 790 F.2d 534 (6th Cir. 1986). If such an enforcement approach is adopted, the Departments will also have to determine what it means for an organization to hold itself out as being religious.

The NPRM does not provide any insight as to what would be required to constitute the required holding out. The NPRM also requires that an organization be organized and operated as a nonprofit entity in order for the accommodation to be available. The Supplementary Information to the NPRM states that " ... an organization is not considered to be organized and operated as a nonprofit entity if its assets or income accrue to the benefit of private individuals or shareholders" however, the NPRM does not tell us what standard should be used for making the "no private benefit" determination. The IRS has issued regulations and other guidance on the "no private inurement" requirement applicable to Code section 501(c)(3) organizations. The IRS and the courts have

also developed a broader "no private benefit" rule, also applicable to such organizations. Are these the rules to be used to make the "no private benefit" determination for purposes of "eligible organization" status? And will even $1.00 of private benefit cause the requirement not to be met? To the extent that the self-certification process is "self-policing," securing answers to these questions is perhaps not as urgent. However, if the Departments will be involved in oversight and enforcement of eligible organization status, the need for clear guidance on these questions becomes extremely important.

B. Application of the Accommodation

1. Insured Plans

In the case of an insured plan, the NPRM attempts to accommodate religious employers that object to providing contraception coverage by having the insurer providing group coverage assume the responsibility by providing individual insurance policies that provide contraception coverage to plan participants and beneficiaries without cost sharing. This proposed structure is thought to avoid conflicts for a religious employer because the employer would have "no role in contracting, arranging, paying or referring for this separate contraception coverage." 78 Fed. Reg. at 8463. However, for the reasons explained below, the NPRM fails to address the religious liberty concerns of religious organizations that object to providing contraception coverage on account of their religious beliefs. The NPRM still requires an objecting eligible organization to violate its religious beliefs by requiring it to play a

substantial role in the provision of contraception coverage to its employees or pay a penalty.[13]

a. Eligible organizations will be paying for contraception coverage

Other commenters have noted that contraception coverage, like lunch, is not free. Since the eligible organizations (and plan participants in the case of contributory plans) are paying all the premiums, they must be paying for the contraception coverage. The Departments appear to be of the view that the group health insurers, not the eligible organizations or plan participants, will be providing the coverage, and that the insurers will do so because, when viewed together with the underlying group policy, the cost of contraception coverage will be less, or at least no more, than the cost of unplanned pregnancies. The Church Alliance remains skeptical about this assumption for the reasons set forth in its prior comments. However, even if true, religious organizations will still be paying for contraception coverage for the reasons set forth below.

First, the NPRM provides that the contraception coverage cannot be "reflected in the group health insurance premium." 78 Fed. Reg. at 8462. It follows therefore that the insurer will charge the eligible organization more for its group coverage because of the increased cost of unplanned pregnancies resulting from the omission of contraception coverage. Even if a group insurer could take the effect of individual contraception policies into account in setting the rates for an eligible organization's

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[13] *See*, footnote 2, *supra*.

group policy,[14] the insurer will still charge more for the eligible group coverage it will be required to issue because of the increased cost of administering the individual policies (e.g., state policy approvals, separate mailings, printing costs, increased cost of coordinating benefits, etc.).

Second, even if one ignores the additional administrative costs and assumes that the contraception coverage is cost neutral, the coverage is neutral only in the short run. Since the terms of group health insurance contracts rarely exceed more than 12 months in duration, the "cost" to one insurer for contraception coverage will often be recouped, if at all, in a subsequent plan year by a different insurer in the form of reduced unplanned pregnancies. Insurers cannot be certain that their policies will be renewed. Accordingly, in setting the premiums for any year, they will discount the future benefit of the upfront cost of provided contraception coverage.

b. Employees of eligible organizations will be receiving contraception coverage by virtue of their employment

Due to the absence of cost sharing, employees of eligible organizations will be receiving contraception coverage by virtue of their employment for less nothing, in fact - than they would have paid for the

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[14] We express no comment on whether under applicable state insurance laws the insurer can consider the individual policies in setting the rates for the group policies. State insurance regulators are, of course, concerned about insurers setting rates too high. However, they are also concerned about insurers setting rates too low since it could affect their solvency.

coverage elsewhere. For plans that are covered by ERISA, this will cause the contraception coverage to be part of the group plan because the contraception coverage will be part of an employee benefit program "established or maintained by an employer." 29 U.S.C. § 1002(1).

In an analogous situation, employers have been held to have contributed to the cost of an employee-pay-all plan, thus bringing the plan under ERISA, if the plan participants could not have obtained the same coverage elsewhere for the same cost, perhaps because of a group discount. See, *House v. Am. United Life Ins. Co.*, 499 F.3d 443, 449 (5th Cir. 2007); *Tannebaum v. Unum Life Ins. Co.*, 2006 WL 26710405 (E.D. Pa.); *McCann v. Unum Provident*, Civ. Action No. 11-3241 (MCC) (D.N.J. 2013); *Healy v. Minnesota Life Ins. Co.*, 2012 WL 566759 (W.D. Mo.); *Moore v. Life Ins. Co. of North America*, 708 F. Supp. 2d 597 (N.D. W.V 2010); *Chatterton v. Cuna Mut. Ins. Society*, 2007 WL 4207395 (S.D. W.V.); *Brown v. Paul Revere Life Ins. Co.*, 2002 WL 1019021 (E.D. Pa.) ("Where an employer provides the employee benefits they cannot receive as individuals, it has contributed to an ERISA plan."); and *Kuehl v. Provident Life & Accident Ins. Co.*, 2000 U.S. Dist. LEXIS 21625, *10 (E.D. Wis. Apr. 20, 2000) (contribution exists where 1 0% discount available only to employees in group plans). But see, *Schwartz v. Provident Life & Acc. Ins. Co.*, 280 F. Supp. 2d 937 (D. Ariz. 2003) (discount in and of itself not sufficient to establish an employer plan under ERISA).

Similarly, Code section 4980B and ERISA section 601 generally require most employers with 20 or more employees that have or contribute to plans to

provide COBRA continuation coverage if they maintain a group health plan. Treasury Regulation §54.4980B-2 provides that "a group health plan is maintained by an employer ... even if the employer does not contribute to it if coverage under the plan would not be available at the same cost to an individual but for the individual's employment-related connection to the employer ...."

c. Eligible organizations will be facilitating the providing of contraception coverage

The NPRM provides that the contraception coverage provided through individual contraception policies will not be "offered by or through a group health plan." 78 Fed. Reg. at 8462. Insurers will automatically provide contraception coverage for plan participants and beneficiaries. 78 Fed. Reg. at 8463 ("The issuer would automatically enroll plan participants and beneficiaries in a separate individual health insurance policy that covers recommended contraceptive services.") However, eligible organizations remain free to determine who is eligible to participate in their group health plans. Accordingly, by determining who will be eligible to participate in their group health plans, eligible organizations will be effectively determining who receives an individual policy providing contraception coverage. For plans covered by ERISA, serving as such a gatekeeper has been held sufficient employer involvement to indicate the presence of an "employee benefit plan established or maintained ... by an employer" which is therefore covered by ERIS A. See, *Glass v. United Omaha Life Ins. Co.*, 33 F.3d 1341 (11th Cir. 1994); *Brundage - Peterson v. Compare*

Health Services Ins. Corp., 877 F.2d 509, 510-11 (7th Cir. 1989); and *Rengifo v. Hartford Life and Accident Ins. Co.*, Case No. 8:09-CV-l 725-T-17MAP (M.D. FL 2010).

d. The NPRM will limit eligible organizations' choice of group health insurers

The NPRM provides that an insurance company issuing a group policy to an employer will provide to plan participants "contraception coverage under individual policies, certificates, or contracts of insurance (hereinafter referred to as individual health insurance policies)." 78 Fed. Reg. at 8462.

The NPRM apparently assumes that an insurer that has issued a group health policy to an eligible organization can legally issue such "individual health insurance policies" to any plan participant. In some cases, an insurer cannot. The NPRM notes that the individual contraception policies issued in connection with self-insured plans will be subject to all applicable state laws, including state insurance filing and rate review requirements. 78 Fed. Reg. at 8465. As explained below, individual contraception policies issued in connection with insured plans will be treated as individual policies and therefore involve the laws not only of the state in which the group policy will be issued, but each state in which a plan participant resides.[15]

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[15] Certificates of insurance are generally treated as evidence of coverage under a group plan. They do not expand the coverage provided under the group policy.

Although insurance involves interstate commerce, as the result of the federal McCarran-Ferguson Act, the right to regulate insurance companies has generally been relegated to the states. State insurance regulators are charged with overseeing the regulation of the insurance industry to ensure that insurers remain solvent, and that the rules and requirements enacted by the state legislature are complied with. The laws vary from state to state, but states generally require insurers doing business in a state to be licensed in a state. In the case of group insurance, the insurance company frequently need only be licensed in the state in which the policy is issued. For example, Alabama's unauthorized insurers law does not apply to "[t]ransactions in [Alabama] involving group ... insurance ... where the master policy or contract was lawfully issued and delivered in a state in which the insurer was authorized to transact business." Ins. Code § 27-11-2(4). Other states have similar provisions. Thus, an insurance company can often issue a group health policy to an employer headquartered in one state even though the policy may cover employees residing in other states so long as the insurer is licensed in the state in which the employer is headquartered. However, that changes when an insurance company issues individual policies. Each state will require a company issuing individual policies to its residents to be licensed in that state. Accordingly, an insurer issuing a group policy to an eligible organization may not be able to issue individual contraception policies to each plan participant unless it is licensed in all the states in which plan participants reside and complies with the insurance laws of all those states. In

addition to state filing and rate review requirements, those laws could include requirements regarding (i) provider access; (ii) utilization reviews, grievance reviews/internal appeals, and external reviews; (iii) prompt payment of claims; (iv) mandated benefits; (v) small group rating requirements; and (vi) handling of complaints. If an eligible organization is satisfied with its current insurer, it should not have to change insurers to an insurer that can issue individual contraception policies in each state in which a plan participant or beneficiary resides. The group health insurance market is already concentrated. Effectively limiting eligible organizations to large insurers that are licensed in all states, or at least in all the states in which plan participants reside, would severely limit eligible organizations' choice of insurers.

2. Uninsured Plans

a. Alternative approaches for providing participants and beneficiaries in self-insured group health plans contraception coverage

The Departments have not yet issued regulations on contraception coverage for self-insured group health plans. However, in the Supplementary Information to the NPRM, the Departments described three "alternative approaches for providing participants and beneficiaries in self-insured group health plans established or maintained by eligible organizations with contraception coverage at no additional cost, while protecting the eligible organizations from having to contract, arrange, pay, or refer for such coverage."

In the subsections that follow, the Church Alliance will comment on each of the three described approaches, particularly as they would apply to multiple employer church plans.

Under all three approaches, the Departments state that "if there is a third party administrator for the self-insured group health plan of the eligible organization, the eligible organization would provide the third party administrator with a copy of its self-certification." In addition, if "the plan uses a separate third party administrator for certain coverage, such as prescription drug coverage, the eligible organization would also provide a copy of its self-certification to the separate third party administrator" if the separate coverage includes coverage of any contraceptive service listed in the self-certification.

However, it is unclear, in the multiple employer church plan context, which entity would be considered the third party administrator, especially since the proposed regulations contain no definition of that term. With multiple employer church plans, the "denominational plan board"[16] may perform many of the administrative functions that would be performed by an independent third party

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[16] The term "denominational plan board" is intended to mean an organization that is described in Code section 414(e)(3)(A) as "an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches."

administrator in a single employer plan context, and is a "third party" in the sense that it is not the employer or participant. So, in such situations, is the denominational plan board the third party administrator? If the denominational plan board is the third party administrator, none of the approaches appear workable, because of the required involvement by the third party administrator, which is an exempt religious employer.

If there is a claims administrator that processes health benefits claims for a multiple employer church plan, is that claims administrator the third party administrator? Does the answer change if a denominational plan board that performs much of the health plan administration utilizes multiple claims administrators, for multiple categories of claims that include contraceptive services (e.g. by type of benefit or claim (e.g., pharmaceutical or medical) or geographic area, including city)? Can the answer change from year to year, depending on the level of administration by the denominational church plan board versus the claims administrator in the year in question?

With each of the three approaches, an adjustment would be made in the user fees that otherwise would be charged by an FFE to the issuer providing the contraception coverage.[17] However, it is unclear how

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[17] Because the FFE user fee adjustments do not begin until 2014, after the end of the temporary enforcement safe harbor for some plans pursuant to guidance issued by the Departments on February 10, 2012, and reissued on August 15, 2012, referred to in 78 Fed. Reg. at 8558 n.6. The safe harbor should be extended to cover this gap period.

this would be administered if a church health plan uses multiple third party administrators, especially if they are affiliated with different issuers or none of them is affiliated with an issuer. It also is unclear how any of the approaches would work if the third party administrator is located in a state without an FFE, and any issuer affiliated with that third party administrator also is located in that state. Due to state licensing regulations, these affiliations may be extremely limited and, at the least, will require interstate coordination, which may not be allowable under state licensing requirements. In addition, if the denominational plan board is the third party administrator, it is unlikely to be affiliated with an issuer.

(i) First Approach

Under this approach, a "third party administrator receiving the copy of the self-certification would have an economic incentive to voluntarily arrange for the separate individual health insurance policies for contraception coverage", because it would be compensated with a reasonable fee for automatically arranging for the contraception coverage. Under this approach, the Supplementary Information to the NPRM describes the third party administrator's role in "automatically arranging for the contraception coverage" as "acting, not as the third party administrator to the self-insured plan of the eligible organization, but rather in its independent capacity apart from its capacity as the agent of the plan."

It is difficult to envision how the third party administrator could provide this service "automatically" because of its relationship to the

eligible organization and its employees, but be acting "in its independent capacity." In addition, how, exactly, could this "automatic" arrangement occur without some involvement on the part of the eligible organization? The eligible organization, first, would be required to provide the third party administrator with a copy of its self-certification. However, without any further involvement, how would the third party administrator have contact information and other necessary information to provide the contraception coverage? Even if the third party administrator had contact information for all employees covered by a multiple employer church plan, how will it distinguish between employees of eligible organizations and employees of exempt religious employers, without identification of those employees by either the eligible organizations or the denominational church plan board? The Supplementary Information to the NPRM requires that individual contraception policies be provided to both plan participants and beneficiaries. In multiple employer church plans, how will the third party administrator know which beneficiaries are connected to eligible organizations and which are connected to exempt religious employers, without involvement of the eligible organizations or denominational church plan board? How will the beneficiaries' addresses and other contact information be obtained? Since this coverage is only for women with reproductive capacity, how will those women be identified, and beginning at what age will the daughters of an eligible organization's employees begin receiving offers of this free coverage? How will the daughters' ages be determined so the offers of

such coverage may be made? How will newly eligible employees and beneficiaries be identified, without the involvement of the eligible organization or denominational church plan board? How will employees and beneficiaries who no longer are eligible for such coverage be identified, or will the issuer need to rely on those individuals to report that they no longer are eligible for this free coverage (because of change of employer, change in hours, change in relationship to employee, etc.)? If the issuer must rely on such self-reporting by the individuals, the individuals will have little incentive to report they no longer are eligible for free coverage.

The Supplementary Information to the NPRM states that issuers providing contraception coverage "would be responsible for providing the notice of availability of such coverage to participants and beneficiaries ... in self-insured group health plans of eligible organizations", and that this notice would be provided directly to plan participants and beneficiaries by the issuer, generally annually. Again, for multiple employer church plans, it is difficult to imagine how these notices would be provided, without the involvement of the eligible organizations or denominational church plan board, due to practical issues like identifying who is entitled to such notices, and their addresses.

Then, what would prevent the third party administrator from aggressively marketing to those employees and beneficiaries not only contraception coverage, but other services and products, on which the administrator could profit, including other services and products that are objectionable to the eligible organization? When the employer or

denominational plan board is involved in services provided, it can retain some oversight, but not when it has "no involvement."

Finally, contraceptive services are unlikely to fit neatly into discrete categories, unrelated to other health services that are covered by a self-insured plan. How will such payments be coordinated between the self-insured plan covering most health services and the third party administrator covering contraceptive services? How will employees and beneficiaries know which plan covers what? For multiple employer church plans with other similar types of coverage questions and coordination, the denominational church plan board resolves the issue.

(ii) Second Approach

Under this approach, coverage under the eligible organization's plan would comply with the requirement to provide contraception coverage only if the third party administrator automatically arranges for an issuer to assume sole responsibility for providing separate individual health insurance policies offering contraception coverage. The third party administrator would not be automatically providing products that are objectionable to the eligible organization (and church, in the case of a multiple employer church plan). However, the third party administrator engaged by the eligible organization still would be arranging for such coverage. Ironically, if the third party administrator would fail to arrange for contraception coverage or the issuer would fail to provide such coverage, the eligible organization's plan coverage would fail to meet the requirements of section 2713 of the Public

Health Service Act, which could subject the plan to severe penalties,[18] through inaction entirely outside the plan's control.

In addition, practical issues could arise with this approach, such as the necessity of individual participant and beneficiary information being provided to the issuer, privacy and security issues that could arise due to this second level of information transmission and questions about responsibility in the event of a breach involving this information. Also, with multiple employer church plans, participants employed by exempt religious employers and those employed by eligible organizations would need to be separated, with only information on the employees (and their beneficiaries) in the latter group being provided to the issuer. For a multiple employer church plan, difficulties are likely to be faced by a third party administrator being required to provide this on a nationwide basis, with separate issuers in different geographic locations, and no or possibly limited affiliation with any issuers. Many of the practical issues raised about the first approach also apply to this approach.

(iii) Third Approach

Under this approach, "the third party administrator, receiving the copy of the self-certification would be directly responsible for automatically arranging for contraception coverage for plan participants and beneficiaries." The "self-certification would have the effect of designating the

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[18] *See*, note 12, *supra*.

third party administrator as the plan administrator under section 3(16) of ERISA solely for the purpose of fulfilling the requirement that the plan provide contraception coverage without cost sharing." This approach is likely to be objectionable to most third party administrators, because it places the legal responsibility for ensuring compliance with section 2713 of the Public Health Service Act solely on the third party administrator, which could have legal implications under ERISA's reporting, disclosure, claims processing and fiduciary provisions for both the third party administrator and the eligible organization.[19]

The Supplementary Information to the NPRM states that "there would be no obligation on a third party administrator to enter into or continue a third party administration contract with an eligible organization if the third party administrator were to object to having to carry out this responsibility." If this approach would be chosen by the Departments, eligible organizations may be faced suddenly with a lack of a third party administrator or suddenly increased fees charged by the third party administrator.

(iv) Problems with all three approaches

For any multiple employer church plan established or maintained by a religious employer, with only religious employers and eligible organizations as

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[19] We assume that it was not the Departments' intent to subject to ERISA's requirements church plans that have not elected under Code section 410(d) to be covered by ERISA.

employers in the plan, all three of the approaches create a multitude of practical issues. Any of the approaches would force the denominational church plan board or the eligible organization to become involved in arranging for contraception coverage and would require continuous involvement in obtaining, sorting and transmitting information, and coordinating coverage. For these reasons and the reasons previously stated, the Church Alliance respectfully requests the exemption of all such multiple employer church plans from the contraception coverage requirement.

All these approaches create particular problems for church plans that are self-administered, and therefore have no third party administrator. The Departments noted in the Supplementary Information to the NPRM that "[n]o comments were submitted in response to the ANPRM on the extent to which there are plans without a third party administrator." 78 Fed. Reg. at 8464. The absence of comments does not mean there are no such plans, especially since there was no guidance issued defining what constitutes a third party administrator. The Church Alliance did comment that the third party administrator approach for self-insured plans would not accommodate the religious objections of self-insured church plans using an affiliated religious organization as an administrator. If a religious organization cannot provide contraception coverage without violating its religious tenets and beliefs, neither can an affiliated religious organization.

Finally, perhaps the biggest question raised by the NPRM is whether insurance companies and third

party administrators will in fact be willing to carry out the duties the Departments have assigned to them in the accommodation process, and in the manner contemplated by the NPRM. To date, there has been no indication that third party administrators will be willing to play such a role, nor has there be any firm indication that an insurance company or companies will be willing to provide a policy that only provides individual contraception coverage. Other commentators have pointed out that such a policy must be approved at the state level and would thus carry with it high administrative costs. It does not seem like an insurance company would be likely to approve a policy on which it will at best make only a small profit or, as some have suggested, lose money - and yet the entire structure of the NPRM seems to rest upon such an assumption and on the assumption that third party administrators will also be willing to create an entirely new administration mechanism when they are not legally required to do so.

In addition to urging greater clarification of the three approaches for self-insured plans suggested in the NPRM, discussed above, the Church Alliance strongly suggests a plan-based approach to an exemption for self-insured plans of religious employers that are also self-administered, or are plans for which the third party administrator is itself a religious organization. Essentially, the only workable solution for self-insured church plans of eligible organizations is a plan-based exemption.

C. Insured and Uninsured Plans Will be Forced to Facilitate Coverage for Abortions

in Violation of Various Federal and State Laws

The NPRM continues the Departments' failure to recognize that for some religious organizations, having to provide coverage for contraceptives approved by the Food and Drug Administration, including so-called emergency contraceptives, such as ella (ulipristal acetate) and Plan B (levonorgestrel), requires the coverage of abortifacient drugs, thus violating: (i) the Weldon amendment; (ii) ACA; and (iii) various state insurance laws.

1. Weldon amendment

The Weldon amendment has been included in every federal appropriations law since 2004. Section 506 of the current Appropriations Act provides:

> (a) None of the funds appropriated in this [Consolidated Appropriations] Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion;
>
> (b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

In addition, Section 507(d) of the Act provides:

> None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity

to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.[20]

2. ACA Section 1303(b)(l)(A)

Section 1303(a)(l)(A) of ACA provides:

> Notwithstanding any other provision of this title ... (i) nothing in this title ... shall be construed to require a qualified health plan to provide coverage of [abortion services] as part of its essential health benefits for any plan year; and (ii) ... the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion services] as part of such benefits for the plan year.

3. State insurance laws

NPRM's requirement for the issuance of individual insurance policies providing coverage for abortifacient drugs without cost sharing conflicts with the laws of several states that prohibit the issuance or delivery of individual policies providing coverage for elective abortions unless a separate premium is charged for such coverage. Kansas law, for example, provides:

> Any individual or group health insurance policy ... delivered, issued for delivery, amended or renewed on or after July 1, 2011, shall exclude coverage for elective abortions, unless the procedure is necessary to preserve the life of the mother. Coverage for abortions may be obtained

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[20] Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 786, 1111.

> through an optional rider for which an additional premium is paid. The premium for the optional rider shall be calculated so that it fully covers the estimated cost of covering elective abortions per enrollee as determined on an average actuarial basis."[21]

These state laws are unaffected by the general preemption provision in the Public Health Service, 42 U.S.C. §300gg-23(a)(l). That section provides that the requirements of part A of title XXVII of that Act, which includes the preventive services requirement, are not to be:

> construed to supersede any provision of state law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the

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[21] Kan. Stat. Ann. §40-2, 190. *See also*, Ken. Rev. Stat. §304.5-160(1) ("No health insurance contracts, plans or policies delivered or issued for delivery in the state shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium."); and Mo. Ann. Code §376.805 ("No health insurance contracts, plans, or policies delivered or issued for delivery in the state shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium.") and R.I. Stat. §27-18-28 ("No health insurance contract, plan, or policy, delivered or issued for delivery in the state, shall provide coverage for induced abortions, except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy resulted from rape or incest, and except by an optional rider for which there must be paid an additional premium.").

> application of a requirement of [part A of title XXVII of the PHS Act].

However, these state insurance laws do not prevent the application of the mandate. Section 1303(c)(l) of ACA states that nothing in the Act preempts, or has any effect on, any State law regarding abortion coverage.

The Departments are apparently of the view that emergency contraceptives are not abortifacients because the latest point at which they operate is to prevent implantation of a newly fertilized embryo in the uterus.[22] However, as the Departments know, some religions sincerely believe that life begins at conception. For organizations that are affiliated with these religions, emergency contraceptives that operate after fertilization are abortifacients.[23] The Departments should accommodate these beliefs. Just as the "power to tax involves the power to destroy,"[24] so too does the power to define. Allowing religious organizations to define for themselves which contraceptives are abortifacients would be consistent with ACA section J 303(a)(l)(A) of ACA, which

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[22] *See, e.g.*, Kelly Wallace, Health and Human Services Secretary Kathleen Sebelius Tells iVillage "Historic" New Guidelines Cover Contraception, Not Abortion (Aug. 2, 2011), http://www.ivillage.com/kathleen-sebeliusguidelines- cover-contraception-not-abortion/4-a-369771 (last visited Mar. 28, 2013).

[23] There is some evidence that some emergency contraceptives operate after implantation. If so, they would be abortifacients even under the Departments' view.

[24] *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 431 (1819) (J. Marshall).

provides that "the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion services] as part of such benefits for the plan year."

Please contact the undersigned at 202-661-3882 if you have any questions or wish to discuss this matter further.

Sincerely,

Stephen H. Cooper
Government Affairs Counselor, K&L Gates
On Behalf of the Church Alliance

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,
Plaintiffs,

v.

Civil Action No. 5:13-CV-01092-D

KATHLEEN SEBELIUS, et al.
Defendants.

DECLARATION OF JOSHUA WELLS

I, Joshua Wells, do hereby state and declare as follows:

1. My name is Joshua Wells. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true and correct and based on my personal knowledge or a review of the business records of Reaching Souls International, Inc. ("Reaching Souls"). If I were called upon to testify to these facts, I could and would competently do so.

2. I am the Director of Development & General Counsel of Reaching Souls. I received a B.A. in English from Oklahoma Baptist University. I also

graduated in 2008 from the Oklahoma City University College of Law where I was the Executive Editor of the Law Review and a Research Assistant for the University General Counsel, J. William Conger. I am an attorney and a current member of the Oklahoma Bar and the bar of this Court.

3. This supplemental declaration is in furtherance of my earlier declaration offered in support of the Plaintiffs' Motion for Preliminary Injunction and also in response to Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment and Memorandum in Support.

4. I understand that, after the Plaintiffs filed their Complaint and Motion for Preliminary Injunction in this action, the government has argued that the government lacks the authority "at this time" to force the third party administrator ("TPA") of a self-insured church health plan like the GuideStone Plan to make separate payments for contraceptive services for participants and beneficiaries under the Mandate's accommodation. However, my understanding is that the government will still require Reaching Souls to execute and submit to the GuideStone Plan's TPAs a prescribed self-certification form.

5. I have reviewed the government's prescribed self-certification form at http://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf. The government's new position does not change Reaching Souls' religious objection to complying with the "accommodation" created under the final rules for GuideStone and employer members of the GuideStone Plan.

6. On the back of the self-certification form, the government states that Reaching Souls "must provide a copy of this certification to a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement."

7. Also, on the back of the form, there is a "Notice to Third Party Administrators of Self-Insured Health Plans," which states that the form "constitutes notice to the third party administrator that ... [t]he obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A," and that "[t]his certification is an instrument under which the plan is operated." It is my understanding that it is these referenced regulations that require that the TPA shall provide or arrange payments for the complained of abortifacients.

8. The self-certification form does not notify the third party administrators of self-insured church health plans of the government's opinion expressed in this litigation that they cannot currently be forced by the government to comply with the federal regulations cited on the form. The self-certification form does not notify the third party administrators of self-insured church health plans that the certification is not a valid "instrument under which the plan is operated." Moreover, it is my understanding that the Mandate prevent employers from telling any third party administrator to disregard the instructions on the form. Specifically, it is my understanding that the Mandate states that the employers "must not, directly or indirectly, seek to influence the third party administrator's decision" to "provide or arrange

separate payments for contraceptive services for participants or beneficiaries." 26 C.F.R. § 54.9815-2713A(b)(3) (emphasis added).

9. And despite the government's new position, it is my understanding that the Affordable Care Act (the "Act") provisions continue to require third party administrators to provide contraceptive coverage, providing that "if a third party administrator receives a copy of the [self] certification ... the third party administrator shall provide or arrange payments for contraceptive services." 29 C.F.R. § 2590.715-2713A(b)(2) (emphasis added); 26 C.F.R. § 54.9815-2713A(b)(2). It is also my understanding that the preamble to these regulations explains, "[a] third party administrator that receives a copy of the self-certification must provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. 39,879, 39,880 (July 2, 2013) (emphasis added). It is my understanding that there is no exception for church-plan TPAs in the regulations, and the regulations on their face appear to apply to all TPAs. Furthermore, the government has stated an intent to enforce these regulations in the future by their statement that they "continue to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans." This is a serious and immediate concern to Reaching Souls that impacts Reaching Souls.

10. Reaching Souls' religious beliefs prohibit us from signing and submitting the self-certification form that on its face authorizes and mandates another organization to deliver abortifacients to employees and other beneficiaries now and in the

future. If Reaching Souls does not sign and submit this self-certification, however, it is Reaching Souls' understanding that it will be charged substantial penalties. These requirements impinge upon Reaching Souls' religious beliefs and substantially burden their religious exercise.

11. Reaching Souls' religious beliefs regarding the sanctity of life are consistent with and like-minded to The Southern Baptist Convention's position on the sanctity of life which provides that Southern Baptists should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. Being required to intentionally facilitate the provision of abortifacient drugs and related education and counseling, as would be required by the Final Mandate, will infringe upon Reaching Souls' sincerely held religious beliefs. Indeed, being required to provide any information to facilitate the government-required certifications to a third party to require that third party to provide employees with access to abortion-inducing drugs and devices will infringe upon Reaching Souls' sincerely held religious beliefs.

12. Reaching Souls should not be required to compromise its commitment to Christian witness by being seen to participate in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk leading others astray.

13. Alternatively, if it is forced to discontinue all coverage to avoid the Mandate, Reaching Souls would be forced to take action repugnant to it and would violate Reaching Souls religious beliefs and

obligations concerning providing health benefits consistent with our religious beliefs for our employees. Reaching Souls and class members would be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which would adversely impact their ministries, or require them to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation.

14. Reaching Souls' religious beliefs prohibit us from: authorizing anyone to arrange for or make payments for abortifacients; taking action that triggers the provision of abortifacients; or take action that is the but-for cause of the provision of abortifacients. Plaintiffs cannot do the following and object to: Signing the self-certification form that on its face authorizes and mandates another organization to deliver abortifacients to employees and other beneficiaries now; Delivering the self-certification form to another organization that could then rely on it as an authorization to deliver these abortifacients to employees and beneficiaries, now or in the future; Agreeing to refrain from speaking to other organizations and instructing or asking them not to deliver abortifacients to employees; Creating a provider-insured relationship (between plan beneficiaries and any third-party administrator), the sole purpose of which would be to provide abortifacients; Participating in a scheme, the sole purpose of which is to provide abortifacients to employees or other beneficiaries. Plaintiffs believe that it would be immoral and sinful for them to intentionally facilitate the provision of abortifacients

and related education and counseling, as would be required by the Mandate.

15. The only way to provide effective relief for Reaching Souls and class members is to enjoin enforcement of the Final Mandate with respect to all non-exempt "eligible organizations" in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON NOVEMBER 22, 2013

/s/ Joshua Wells
JOSHUA WELLS

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

TRUETT-MCCONNELL INTERNATIONAL, INC., et al.,
Plaintiffs,

v.

Civil Action No. 5:13-CV-01092-D

KATHLEEN SEBELIUS, et al.
Defendants.

DECLARATION OF DAVID ARMSTRONG

I, David Armstrong, do hereby state and declare as follows:

1. My name is David Armstrong. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true, correct, and based on my personal knowledge or a review of the business records of Truett-McConnell. If I were called upon to testify to these facts, I could and would competently do so.

2. I am the Vice President of Finance and Operations at Truett-McConnell College ("Truett-McConnell"). I received my undergraduate and master's degrees from Texas A & M. I also hold

Master of Divinity and Master of Theology Degrees from Southeastern Baptist Theological Seminary. I am currently a Doctor of Education Degree candidate from Southeastern Baptist Theological Seminary.

3. This supplemental declaration is in furtherance of my earlier declaration offered in support of the Plaintiffs' Motion for Preliminary Injunction and also in response to Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment and Memorandum in Support.

4. I understand that, after the Plaintiffs filed their Complaint and Motion for Preliminary Injunction in this action, the government has argued that the government lacks the authority "at this time" to force third party administrators ("TPAs") of a self-insured church health plan like the GuideStone Plan to make separate payments for contraceptive services for participants and beneficiaries under the Mandate's accommodation. However, my understanding is that the government will still require Truett-McConnell to execute and submit to the GuideStone Plan's TPAs a prescribed self-certification form.

5. I have reviewed the government's prescribed self-certification form at http://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf. The government's new position does not change Truett-McConnell's religious objection to complying with the "accommodation" created under the final rules for GuideStone and employer members of the GuideStone Plan.

6. On the back of the self-certification form, the government states that Truett-McConnell "must provide a copy of this certification to a third party

administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement."

7 Also, on the back of the form, there is a "Notice to Third Party Administrators of Self-Insured Health Plans," which states that the form "constitutes notice to the third party administrator that ... [t]he obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A," and that "[t]his certification is an instrument under which the plan is operated." It is also my understanding that these referenced regulations require that the TPA shall provide or arrange payments for the complained of abortifacients.

8. It is my understanding that the Mandate prevents employers from telling any third party administrator to disregard the instructions on the form. Specifically, it is my understanding that the Mandate states that the employers "must not, directly or indirectly, seek to influence the third party administrator's decision" to "provide or arrange separate payments for contraceptive services for participants or beneficiaries." 26 C.F.R. § 54.9815-2713A(b)(3).

9. And despite the government's new position, it is my understanding that the Affordable Care Act (the "Act") provisions continue to require third party administrators to provide contraceptive coverage, providing that "if a third party administrator receives a copy of the [self] certification ... the third party administrator shall provide or arrange payments for contraceptive services." 29 C.F.R. § 2590.715-

2713A(b)(2); 26 C.F.R. § 54.9815-2713A(b)(2). It is also my understanding that the preamble to these regulations explains, "[a] third party administrator that receives a copy of the self-certification ... must provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. 39,879, 39,880 (July 2, 2013). It is my understanding that there is no exception for church-plan TPAs in the regulations, and the regulations on their face appear to apply to all TPAs. Furthermore, the government has stated an intent to enforce these regulations in the future by their statement that they "continue to consider potential options to fully and appropriately extend the consumer protections provided by the regulations to self-insured church plans." This is a serious and immediate concern to Truett-McConnell. Truett-McConnell is confronted with having to take action under the Mandate within the next 35 days that violates its religious beliefs and requires court consideration.

10. Truett-McConnell's religious beliefs prohibit us from signing and submitting the self-certification form that on its face authorizes and mandates another organization to deliver abortifacients to employees and other beneficiaries now and in the future. If Truett-McConnell does not sign and submit this self-certification, however, it is Truett-McConnell's understanding that it will be charged substantial penalties. These requirements impinge upon Truett-McConnell's religious beliefs and substantially burden their religious exercise.

11. Truett-McConnell has adopted the Southern Baptist Convention's Baptist Faith and Message

2000 as its own statement of faith and official doctrinal statement. Article 15 of the *Baptist Faith and Message 2000*, provides "[w]e should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death." The Mandate's requirement that Truett-McConnell intentionally facilitate the provision of abortifacient drugs and related education and counseling by signing and submitting the self-certification and being involved in this process infringes Truett-McConnell's sincerely held religious beliefs.

12. Additionally, Truett-McConnell should not be required to compromise its commitment to Christian witness by being seen to participate in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk leading others astray.

13. As part of its religious belief that it must promote the spiritual and physical well-being of its employees, Truett-McConnell provides them with comprehensive health benefits. However, if it is forced to discontinue all coverage to avoid the Mandate, Truett-McConnell would be forced to take action repugnant to it and would violate Truett-McConnell religious beliefs and obligations concerning providing health benefits consistent with our religious beliefs for our employees. Truett-McConnell and class members would also be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which would adversely impact their ministries, or require them to increase employee compensation so that employees could purchase their own health insurance and pay the

additional income taxes resulting from the increased compensation.

14. Moreover, based on my understanding of the criteria under the Final Mandate, because Truett-McConnell has approximately 78 full time employees, it would be exposed to significant annual excise tax penalties of $2,000 per full-time employee if it cancels its health plan.

15. Truett-McConnell's religious beliefs prohibit us from: authorizing anyone to arrange for or make payments for abortifacients; taking action that triggers the provision of abortifacients; or take action that is the but-for cause of the provision of abortifacients. Truett-McConnell cannot do the following and object to: signing the self-certification form that on its face authorizes and mandates another organization to deliver abortifacients to employees and other beneficiaries now; delivering the self-certification form to another organization that could then rely on it as an authorization to deliver these abortifacients to employees and beneficiaries, now or in the future; agreeing to refrain from speaking to other organizations and instructing or asking them not to deliver abortifacients to employees; creating a provider-insured relationship (between plan beneficiaries and any third-party administrator), the sole purpose of which would be to provide abortifacients; participating in a scheme, the sole purpose of which is to provide abortifacients to employees or other beneficiaries. Plaintiffs believe that it would be immoral and sinful for them to intentionally facilitate the provision of abortifacients and related education and counseling, as would be required by the Mandate.

16. The only way to provide effective relief for Truett-McConnell and class members is to enjoin enforcement of the Final Mandate with respect to all non-exempt "eligible organizations,, in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON October 25, 2013

/s/ David Armstrong
David Armstrong

No. 15-119

U.S. District Court

Western District of Oklahoma [LIVE]
(Oklahoma City)

CIVIL DOCKET FOR CASE #: 5:13-cv-01015-F

Southern Nazarene University et al v. Sebelius et al — Date Filed: 09/20/2013

Assigned to: Honorable Stephen P Friot — Jury Demand: None

Case in other court: Tenth Circuit Court of Appeals, 14-06026 — Nature of Suit: 440 Civil Rights: Other

Cause: 42:1981 Civil Rights — Jurisdiction: U.S. Government Defendant

* * *

11/27/2013	19	MOTION for Preliminary Injunction by All Plaintiffs. (Baylor, Gregory) (Entered: 11/27/2013)
11/27/2013	20	MEMORANDUM in Support re 19 MOTION for Preliminary Injunction filed by All Plaintiffs. (Baylor, Gregory) (Entered: 11/27/2013)

* * *

12/17/2013	25	RESPONSE in Opposition re 19 MOTION for Preliminary Injunction filed by All Defendants. (Pollack, Michael) (Entered: 12/17/2013)
12/17/2013	26	MOTION to Dismiss for Lack of Jurisdiction *or, in the Alternative*, MOTION for Summary

		Judgment, *and Memorandum in Support* by All Defendants. (Pollack, Michael) Modified on 8/15/2014 (llg). (Entered: 12/17/2013)
		* * *
12/19/2013	32	MOTION to File Amicus Brief by American Civil Liberties Union. (Henderson, Brady) (Entered: 12/19/2013)
12/19/2013	33	BRIEF IN SUPPORT *of Defendants' Motion to Dismiss, or in the alternative, for summary judgment, and in opposition to Plaintiff's Motion for Preliminary Injunction, submitted pending leave to enter as Amicus Curiae*, by American Civil Liberties Union. (Henderson, Brady) (Entered: 12/19/2013)
		* * *
12/20/2013	38	REPLY to Response to Motion re 19 MOTION for Preliminary Injunction filed by All Plaintiffs. (Baylor, Gregory) (Entered: 12/20/2013)
		* * *
12/21/2013	43	STIPULATION re 19 MOTION for Preliminary Injunction *Joint Stipulation of Facts* by All Plaintiffs. (Baylor, Gregory) (Entered: 12/21/2013)

* * *

12/23/2013	45	ORDER granting 19 Motion for Preliminary Injunction; denying 26 Motion to Dismiss to the extent that it seeks dismissal under Rule 12(b)(6). The defendants, their agents, officers, and employees, and all others in active concert or participation with them, Rule 65, Fed.R.Civ.P., are ENJOINED and RESTRAINED from any effort to apply or enforce, as to plaintiffs, the substantive requirements imposed by 42 U.S.C. § 300gg-13(a)(4) and at issue in this case, or the self-certification regulations related thereto, or any penalties, fines or assessments related thereto, until the further order of the court. Signed by Honorable Stephen P Friot on 12/23/13. (kw,) Modified on 12/23/2013 to correct docket text (kw,). (Entered: 12/23/2013)
12/26/2013	46	ENTER ORDER granting 32 Motion of the American Civil Liberties Union and the American Civil Liberties Union of Oklahoma for Leave to File Amicus Curiae Brief. Entered at the direction of Honorable Stephen P Friot on 12/26/13. (llg)

(Entered: 12/26/2013)

* * *

1/16/2014	53 UNOPPOSED MOTION to Stay Case by All Defendants. (Attachments: # 1 Attachment Proposed Order)(Pollack, Michael) (Entered: 01/16/2014)
1/17/2014	54 ORDER granting 53 Defendants' Unopposed Motion for Stay of Proceedings. All proceedings in this case are stayed until 3/1/14. Signed by Honorable Stephen P Friot on 1/17/14. (llg) (Entered: 01/17/2014)
2/11/2014	55 NOTICE OF APPEAL by All Defendants. (Pollack, Michael) (Entered: 02/11/2014)

* * *

2/13/2014	58 MOTION to Stay Case *Pending Appeal* by All Defendants. (Attachments: # 1 Exhibit Ozinga v. HHS, # 2 Exhibit Domino's Farms Corp. v. Sebelius)(Pollack, Michael) (Entered: 02/13/2014)

* * *

03/06/2014	70 RESPONSE in Opposition re 58 MOTION to Stay Case *Pending Appeal* filed by All Plaintiffs. (Baylor, Gregory) (Entered: 03/06/2014)
03/06/2014	71 REPLY to Response to Motion re 58 MOTION to Stay Case

Pending Appeal filed by All Defendants. (Pollack, Michael) (Entered: 03/06/2014)

03/06/2014 72 MEMORANDUM in Opposition re 26 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction *or, in the Alternative* MOTION for Summary Judgment, *and Memorandum in Support* filed by All Plaintiffs. (Baylor, Gregory) (Entered: 03/06/2014)

03/06/2014 73 ORDER granting 58 Defendants' Motion for Stay of Proceedings. Proceedings in this case are stayed pndg resolution of dfts' appeal of this court's order granting plfs' mtn for preliminary injunction. Signed by Honorable Stephen P Friot on 3/6/14. (llg) (Entered: 03/06/2014)

03/31/2014 74 ORDER of USCA as to 55 Notice of Appeal filed by United States Department of the Treasury, Kathleen Sebelius, United States Department of Health and Human Services, Thomas E Perez, United States Department of Labor, Jacob J Lew (kr) (Entered: 04/08/2014)

* * *

07/14/2015 79 USCA OPINION as to 55 Notice of Appeal filed by United States

		Department of the Treasury, Kathleen Sebelius, United States Department of Health and Human Services, Thomas E Perez, United States Department of Labor, Jacob J Lew (kr) (Entered: 07/16/2015)
07/14/2015	80	USCA JUDGMENT as to 55 Notice of Appeal filed by United States Department of the Treasury, Kathleen Sebelius, United States Department of Health and Human Services, Thomas E Perez, United States Department of Labor, Jacob J Lew. These cases originated in the District of Colorado and the Western District of Oklahoma and were argued by counsel. The District Courts denial of a preliminary injunction in Little Sisters, 6 F. Supp. 3d 1225, is affirmed, and the District Courts grant of a preliminary injunction in Southern Nazarene, 2013 WL 6804265, and Reaching Souls, 2013 WL 6804259, is reversed. The cases are remanded to the United States District Courts for the District of Colorado and the Western District of Oklahoma for further proceedings in accordance with the opinion of this court. (kr) (Entered: 07/16/2015)

07/28/2015	81	PETITION FOR WRIT OF CERTIORARI re Supreme Court Number: 15-119 (kr) (Entered: 07/28/2015)
11/10/2015	82	PETITION FOR WRIT OF CERTIORARI Granted (kw) (Entered: 11/12/2015)

U.S. Court of Appeals for the Tenth Circuit

Court of Appeals Docket #: 14-6026

SOUTHERN NAZARENE UNIVERSITY, et al v. BURWELL, et al	Docketed: 02/11/2014 Terminated: 07/14/2015 Nature of Suit: 2440 Other Civil Rights
Trial Judge: Stephen P Friot Case: 5:13-CV-01015-F	Case Type Information: 1) civil 2) USA as party

02/11/2014	[10148784] Civil case docketed. Preliminary record filed. DATE RECEIVED: 02/11/2015 Docketing statement due 02/25/2014 for Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, United States Department of Health & Human Services, United States Department of Labor and United States Department of the Treasury. Transcript order form due 02/25/2014 for Michael C. Pollack. Notice of appearance due on 02/25/2014 for Jacob J. Lew, Mid-America Christian University, Oklahoma Baptist Univeristy, Oklahoma Wesleyan University, Thomas E. Perez, Kathleen Sebelius, Southern Nazarene University, United States Department of Health & Human Services, United States Department of Labor and United States Department of the Treasury [14-6026]

* * *

03/06/2014 [10155404] Motion filed by Appellees Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, Appellants Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 14-6026, Appellants HHS, LABR, Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius in 14-6028 to consolidate appeals, to consolidate briefs. Served on: 03/06/2014. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028, 14-6026] ACJ

* * *

03/18/2014 [10158498] Response filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University and Southern Nazarene University to Appellants' Motion to Consolidate Appeals. Served on 03/18/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026] GB

03/21/2014 [10159555] Reply filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen

Sebelius, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, HHS, LABR, Department of the Treasury, Jacob J. Lew, Mr. Thomas E. Perez and Kathleen Sebelius in 14-6028 to Reply in Support of Government's Motion to Consolidate in Part. Served on 03/21/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6028, 14-6026] ACJ

03/31/2014 [10161813] Order filed by Judges Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes, Matheson, Bacharach, Phillips and McHugh denying the government's motion to consolidate appeals. Appeal numbers 14-6026 and 14-6028 will brief separately and will have separate appendices. The separate briefing will apply to the opening briefs, the response brief, and the optional reply brief. Likewise, the appeals will not be joined for a single oral argument hearing. The court will decide at a later date whether the same panel of judges will hear the matters, and will also determine how and when oral argument will proceed. Those issues remain for consideration. The opening brief and appendix for 14-

6026 reamins due 4/7/2014; the opening brief and appendix for 14-6028 remains due 4/14/2014; and the appellees' brief in 13-1540 remains due the date of this order. Please see order for additional important information. Served on 03/31/2014. [13-1540, 14-6028, 14-6026]

* * *

04/07/2014 [10164268] Appellant/Petitioner's brief filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury. 7 paper copies to be provided to the court. Served on 04/07/2014 by email. Oral argument requested? Yes. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026] PN

04/09/2014 [10165301] Appendix filed by Appellants Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius, HHS, United States Department of Labor and United States Department of the Treasury. Original and 1 copy. Appendix pages: 290. Number of volumes: 1. Hardcopy only. Served on 04/07/2014. Manner of Service: US mail. [14-6026]

* * *

04/14/2014 [10166649] Amicus Curiae brief filed by Feminist Majority Foundation, Ibis

Reproductive Health, Legal Momentum, MergerWatch, NARAL Pro-Choice America, NARAL Pro-Choice Colorado, NARAL Pro-Choice Wyoming, National Organization for Women (NOW) Foundation, National Partnership for Women and Families, National Women's Health Network, National Women's Law Center, Planned Parenthood Association of Utah, Planned Parenthood of Kansas and Mid-Missouri, Planned Parenthood of the Heartland, Planned Parenthood of the Rocky Mountains, Inc., Population Connection, Raising Women's Voices for the Health Care We Need, Service Employees International Union and The Black Women's Health Imperative. Original and 7 copies.. Served on 04/15/2014. Manner of Service: email. [14-6026]

04/14/2014 [10166671] Amicus Curiae brief filed by American Civil Liberties Union, American Civil Liberties Union of Oklahoma and Americans United for Separation of Church and State. Original and 7 copies. Served on 04/14/2014. Manner of Service: email. [14-6026]

* * *

05/12/2014 [10175264] Appellee/Respondent's brief filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan

University and Southern Nazarene University. 7 paper copies to be provided to the court. Served on: 05/12/2014. Manner of service: email. Oral argument requested? No. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes.--[Edited 05/13/2014 by BV to attach errata sheet] [14-6026] GB

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05/16/2014 [10177472] Amicus Curiae brief filed by Liberty, Life and Law Foundation. Original and 7 copies. Served on 05/16/2014. Manner of Service: email. [14-6026]

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05/19/2014 [10177919] Amicus Curiae brief filed by American Bible Society, Association of Christian Schools International, Association of Gospel Rescue Missions, Christian Legal Society, Ethics & Religious Liberty Commission of the Southern Baptist Convention, Institutional Religious Freedom Alliance, Lutheran Church Missouri Synod, National Association of Evangelicals and Prison Fellowship Ministries. 7 copies. Served on 05/19/2014. Manner of Service: email. [14-6026]

06/13/2014 [10183748] Appellant/Petitioner's reply brief filed by Jacob J. Lew, Mr. Thomas E. Perez, Kathleen Sebelius,

HHS, United States Department of Labor and United States Department of the Treasury. 7 paper copies to be provided to the court. Served on 06/13/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026] ACJ

07/01/2014 [10187793] Order filed by Clerk of the Court (EAS) directing supplemental briefing. The plaintiffs separately, as well as the Secretary, shall file simultaneous supplemental briefs as set forth in the attached order on or before 07/22/2014. The briefs shall be no longer than 15 pages in 13 or 14 point font. 7 hard copies must be received by the clerk within 2 business days. Served on 07/01/2014. [13-1540, 14-6028, 14-6026]

* * *

07/22/2014 [10193027] Appellee/Respondent's supplemental brief filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury. 7 paper copies to be provided to the court. Served on 07/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

07/22/2014 [10193104] Appellee/Respondent's supplemental brief filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University and Southern Nazarene University. 7 paper copies to be provided to the court. Served on 07/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026] GB

* * *

08/01/2014 [10195667] Order filed by Clerk of the Court (EAS) The government is ordered to file a written status report on or before Tuesday August 12, 2014, addressing the anticipated timetable for promulgation of the "interim final rules," whether these cases should continue to be scheduled for oral argument, and any further information that may be relevant to assist the court. The plaintiffs may file separate responses to the status report no later than Tuesday, August 19, 2014. Served on 08/01/2014. [13-1540, 14-6026, 14-6028]

08/08/2014 [10197252] Status report filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms.

Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 08/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

* * *

08/19/2014 [10199781] Response filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University and Southern Nazarene University to Appellants' Status Report. Served on 08/19/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026, 14-6028] GB

08/22/2014 [10200873] Status report filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 14-6026, 13-1540, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 08/22/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026, 14-6028, 13-1540] PN

08/27/2014 [10201699] Order filed by Clerk of the Court (EAS) upon consideration of the status reports and responses, the filing of simultaneous supplemental briefs are due on 09/08/2014 as set forth in the attached order. Each brief shall be no longer than 15 pages, double spaced, and in 13 point font. The parties need not submit hard copies. Served on 08/27/2014. [13-1540, 14-6026, 14-6028]

* * *

09/08/2014 [10204556] Appellee/Respondent's supplemental brief filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury. 7 paper copies to be provided to the court. Served on 09/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] MB

09/08/2014 [10204592] Appellee/Respondent's supplemental brief filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University and Southern Nazarene University. Served on 09/08/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-

6026]—[Edited docket text re: number of copies 09/08/2014 by SLS.] GB

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09/17/2014 [10207226] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 09/17/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

* * *

11/18/2014 [10225361] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 11/18/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

12/05/2014 [10229885] Response filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University and Southern Nazarene University to Appellants' Nov. 14, 2014 Rule 28(j)

Supplemental Authority regarding Priests for Life v. U.S. Dept. of Health and Human Services. Served on 12/05/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [14-6026] GB

12/08/2014 [10230454] Case argued by Adam Jed for the Appellant and by Gregory Baylor for the Appellee; Submitted to Judges Matheson, McKay and Baldock. [14-6026]

12/08/2014 [10230642] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Mr. Thomas E. Perez, HHS, United States Department of Labor and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 12/08/2014. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

* * *

12/23/2014 [10235401] Response filed by Mid-America Christian University, Oklahoma Baptist University, Oklahoma Wesleyan University and Southern Nazarene University in 14-6026 to Response to Appellants Dec. 8, 2014 FRAP 28(j) letter. Served on 12/23/2014. Manner of Service: email. This pleading complies with all

required (privacy, paper copy and virus) certifications: Yes.--[Edited 12/23/2014 by BV to remove from appeal No. 14-1492] [14-6026] GB

01/30/2015 [10244434] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) letter.. Served on 01/30/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

02/11/2015 [10247577] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 02/11/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

02/19/2015 [10249294] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States

Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Feb. 10 Notice of Supplemental Authority. Served on 02/19/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

03/11/2015 [10254104] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to 28(j) about GVR. Served on 03/11/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

04/29/2015 [10267930] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr.

Thomas E. Perez in 14-6028 to 28(j) Letter. Served on 04/29/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ACJ

05/21/2015 [10273760] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 05/21/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

06/24/2015 [10281616] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 06/24/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

07/09/2015 [10285379] Supplemental authority filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United

States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028. Served on 07/09/2015. Manner of Service: email. [13-1540, 14-6026, 14-6028] ACJ

07/14/2015 [10286343] Affirmed and Reversed; Terminated on the merits after oral hearing; Written, signed, published. Judges Matheson (authoring), McKay and Baldock (dissenting in part). Mandate to issue. [13-1540, 14-6026, 14-6028]

07/14/2015 [10286354] Judgment for opinion filed. [13-1540, 14-6026, 14-6028]

07/28/2015 [10290163] Petition for a writ of certiorari filed by Southern Nazarene University, et al., on 07/24/2015. Supreme Court Number 15-119. [14-6026, 14-6028]

08/06/2015 [10292806] Motion filed by Appellants Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Appellees Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028, SOUTHERN NAZARENE

UNIVERSITY; OKLAHOMA WESLEYAN UNIVERSITY, INC., OKLAHOMA BAPTIST UNIVERSITY, INC., MID-AMERICA CHRISTIAN UNIVERSITY, INC. to stay execution of the mandate until 12/31/2015. Served on: 08/06/2015. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] CCS

* * *

08/12/2015 [10294167] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Plaintiffs' Motion for Stay of Mandate. Served on 08/12/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ABK

08/12/2015 [10294233] Response filed by Ms. Sylvia Mathews Burwell, Jacob J. Lew, Thomas Perez, Mr. Thomas E. Perez, HHS and United States Department of the Treasury in 13-1540, 14-6026, Ms. Sylvia Mathews

Burwell, HHS, LABR, Department of the Treasury, Jacob J. Lew and Mr. Thomas E. Perez in 14-6028 to Plaintiffs' Motion for Stay of Mandate. Served on 08/12/2015. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-1540, 14-6026, 14-6028] ABK

08/19/2015 [10295864] "Reply in Support of Their Motion for Stay of Mandate Pending Petitions for Writ of Certiorari" filed by Appellants Christian Brothers Employee Benefit Trust, Christian Brothers Services, Little Sisters of the Poor Home for the Aged, Denver, Colorado and Little Sisters of the Poor, Baltimore, Inc. in 13-1540, Appellees Guidestone Financial Resources of the Southern Baptist Convention, Reaching Souls International, Inc. and Truett-McConnell College, Inc. in 14-6028, and SOUTHERN NAZARENE UNIVERSITY; OKLAHOMA WESLEYAN UNIVERSITY, INC., OKLAHOMA BAPTIST UNIVERSITY, INC.; MID-AMERICA CHRISTIAN UNIVERSITY, INC. in 14-6026. Served on: 08/19/2015. Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes—[Edited 08/19/2015

by KF to correct the event code and modify the text.] [13-1540, 14-6026, 14-6028] CCS

08/21/2015 [10296442] Order filed by Judges Matheson, McKay and Baldock. The motion to stay the mandate is granted. Issuance of the mandate is stayed in these appeals pending the Supreme Court's consideration of the certiorari petitions. If the petitions are granted, the stay of the mandate shall continue until the Supreme Court's final disposition. Served on 08/21/2015. [13-1540, 14-6026, 14-6028]

09/03/2015 [10299849] Published order filed by Judges Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes, Matheson, Bacharach, Phillips, McHugh and Moritz. A poll was called, sua sponte, to consider en banc rehearing. Upon consideration, a majority of the active judges voted to deny. Judges Kelly, Hartz, Tymkovich, Gorsuch, and Holmes voted to grant en banc rehearing. Judge Hartz has written separately in dissent. Judges Kelly, Tymkovich, Gorsuch and Holmes join in that dissent. [13-1540, 14-6026, 14-6028]

11/10/2015 [10318052] Supreme court order dated 11/06/2015 granting certiorari filed. [14-6026, 14-6028]

Excerpts from Complaint in *Southern Nazarene University v. Sebelius*, No. 5:13-cv-01015 (W.D. Okla.)

* * *

30. SNU's current enrollment is approximately 2,100.

* * *

53. OKWU's current enrollment is approximately 1,220.

* * *

71. OBU's current enrollment is approximately 1,900.

* * *

90. Approximately 1,447 students are currently enrolled at MACU.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) SOUTHERN NAZARENE UNIVERSITY; (2) OKLAHOMA WESLEYAN UNIVERSITY; (3) OKLAHOMA BAPTIST UNIVERSITY; and (4) MID-AMERICA CHRISTIAN UNIVERSITY,	)	
Plaintiffs,	)	
v.	)	
(1) KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; (2) THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor; (3) JACOB J. LEW, in his official capacity as Secretary of the United States Department of the Treasury; (4) UNITED STATES DEPARTMENT	)	Case No. 5:13-cv-01015-F

OF HEALTH AND HUMAN SERVICES; (5) UNITED STATES DEPARTMENT OF LABOR; and (6) UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

JOINT STIPULATION OF FACTS— PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The parties stipulate to the following facts for the limited purpose of this Court's adjudication of Plaintiffs' motion for preliminary injunction:

1. Plaintiffs Southern Nazarene University (SNU), Oklahoma Wesleyan University (OKWU), Oklahoma Baptist University (OBU), and Mid-America Christian University (MACU) (collectively, "the Universities") are Christ-centered institutions of higher learning.

2. The Universities hold, as a matter of sincere religious conviction, that it would be sinful and immoral for them to participate in, pay for, facilitate, enable, or otherwise support access to Plan B, ella, and IUDs, and related counseling.

3. The Universities believe that Plan B, ella, and IUDs can and sometimes do act abortifaciently by preventing implantation after fertilization.

4. They hold that one of the prohibitions of the Ten Commandments ("thou shalt not murder") precludes them from facilitating, assisting in, or

enabling the use of drugs or devices that they believe destroy very young human beings in the womb.

5. The Universities believe that their religious duties include promoting the physical well-being and health of their employees by providing them health insurance coverage.

6. OBU and SNU believe that their religious duties include promoting the physical well-being and health of their employees by offering them health insurance coverage.

7. SNU has approximately 505 employees, of which approximately 315 are full-time.

8. Approximately 253 SNU employees are enrolled in health insurance plans sponsored by the University. Approximately 249 dependents of employees are covered. The plans thus cover approximately 502 individuals.

9. SNU offers coverage through BlueCross BlueShield of Oklahoma. SNU offers beneficiaries two choices: "Blue Choice PPO – SNU Choice" and "Blue Choice PPO – SNU Premier."

10. SNU's health plan is partially self-insured. The university has contracted with an outside insurance company to pay all claims over $100,000.

11. The plan year for SNU's employee health insurance coverage begins on July 1 of each year.

12. SNU's employee health plans cover a variety of contraceptive methods. However, consistent with its religious commitments, SNU's contract for employee health coverage states that all drugs and devices that act after fertilization has occurred are excluded.

13. All SNU students enrolled in nine hours or more of classroom instruction are required to have health insurance.

14. SNU offers a health plan to those students who do not have health insurance coverage of their own.

15. The student plan excludes ella, Plan B, and IUDs.

16. The next student plan year begins on August 21, 2014.

17. Oklahoma Wesleyan University has approximately 557 employees, and about 112 of them are full-time.

18. OKWU provides two plans insured by Community Care of Oklahoma. One is an HMO benefit plan and the other is a PPO benefit plan.

19. Ninety-three employees are enrolled in the group health plans sponsored by OKWU. An additional 128 of these employees' dependents are covered, meaning that 221 individuals are covered by OKWU's group health plans.

20. Consistent with its religious commitments, the University's current contracts for employee health coverage exclude IUDs and emergency contraception.

21. The OKWU employee health plans do cover a variety of contraceptive methods.

22. The plan year for Oklahoma Wesleyan University's employee health insurance coverage begins on July 1 of each year.

23. OBU has approximately 328 employees, of whom about 269 are full time.

24. OBU provides eligible employees a PPO health plan with the choice of two networks provided by Blue Cross Blue Shield of Oklahoma.

25. Approximately 279 employees are covered by the plans. Approximately 696 dependents of employees are covered by the plans, bringing total coverage to 975 individuals.

26. Plan years for OBU's employee health plans begin on January 1 of each year.

27. The current OBU employee health plan excludes coverage of Plan B, ella, and IUDs.

28. All undergraduate and graduate students taking nine or more credit hours' worth of classes are eligible to enroll in a health plan facilitated by OBU.

29. The current OBU student health plan does not cover Plan B, ella, or IUDs.

30. A new OBU student plan is scheduled to go into effect on January 1, 2014.

31. MACU has approximately 298 employees, of whom about 139 are full time.

32. MACU's employee health plans cover approximately 100 employees.

33. The plan covers approximately 116 dependents of these employees.

34. MACU offers two traditional PPO plans: Health Choice 1000 and Health Choice 2000, both provided by GuideStone.

35. The plan year for MACU's employee health plan begins on January 1.

36. MACU's employee health plan does not cover Plan B, ella, or IUDs.

37 Prior to the promulgation of the challenged regulations, the Universities contracted with their health insurance issuers and third party administrators not to provide or pay for the coverage to which the Universities object.

38. In March 2010, Congress passed, and President Obama signed, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 11 152 (March 30, 2010), together known as the "Affordable Care Act" (ACA).

39. One ACA provision requires that any "group health plan" or "health insurance issuer offering group or individual health insurance coverage" provide coverage for certain preventive care services, including "[for] women, such additional preventive care and screenings as provided for in comprehensive guidelines supported by the Health Resources and Services Administration [(HRSA)]." 42 U.S.C. § 300gg-13(a).

40. These services must be covered without "any cost sharing." 42 U.S.C. § 300gg-13(a).

41. Because there were no such existing HRSA guidelines relating to preventive care and screening for women, the Department of Health and Human Services (HHS) requested that the Institute of Medicine (IOM) develop recommendations to implement the requirement to provide coverage, without cost-sharing, of preventive services for women.

42. After conducting a review, IOM recommended that women's preventive services include, among

other things, "the full range of [FDA]-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity."

43. On August 1, 2011, HRSA adopted guidelines consistent with IOM's recommendations, subject to an exemption relating to certain religious employers authorized by regulations issued that same day.

44. Plan B, ella, and IUDs fall within the category of "FDA-approved contraceptive methods."

45. Defendants exempted certain religious employers from the regulations.

46. The Universities are not eligible for this exemption.

47 Defendants created a "Temporary Enforcement Safe Harbor" for religious organizations ineligible for the religious exemption.

48. The Universities were eligible for, and took advantage of, the Temporary Enforcement Safe Harbor.

49. The Temporary Enforcement Safe Harbor expires beginning January 1, 2014. More specifically, the Safe Harbor is no longer available at the beginning of the first plan year on or after January 1, 2014.

50. The Safe Harbor is thus not available to OBU and MACU with respect to the employee and student plan years than begin on January 1, 2014.

51. The Safe Harbor will no longer be available to SNU and OKWU with respect to its employee and student plan years that begin on July 1, 2014.

52. Defendants promulgated regulations that provide for accommodations for certain organizations not eligible for the exemption that have a religious objection to including some or all "FDA-approved contraceptive methods" and related counseling in their employee and/or student health insurance plans.

53. A non-exempt religious organization is eligible for an accommodation if it satisfies the following requirements: (a) it opposes providing coverage of some or all of any contraceptive services required to be covered under the applicable regulations on account of religious objections; (b) it is organized and operates as a nonprofit entity; (c) it holds itself out as a religious organization; and (d) it self-certifies, in a form and manner specified by the Secretaries of Health and Human Services and Labor, that it satisfies the three preceding criteria and makes such self-certification available for examination upon request.

54. Under the regulations, a group health plan established or maintained by an organization eligible for an accommodation ("eligible organization") that provides benefits on a self-insured basis complies with the requirement to provide contraceptive coverage if (a) the organization or its plan contracts with one or more third party administrators; and (b) the organization provides each third party administrator that will process claims for any contraceptive services that must be covered with a copy of a "self- certification."

55. Under the regulations, a group health plan established or maintained by an eligible organization

that provides benefits on a self-insured basis must not, directly or indirectly, seek to interfere with a third party administrator's arrangements to provide or arrange separate payments for some or all contraceptive services for participants or beneficiaries, and must not, directly or indirectly, seek to influence the third party administrator's decision to make such arrangements.

56. Under the regulations, if a third party administrator receives a copy of the self-certification, and agrees to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, the third party administrator shall provide or arrange payments for contraceptive services.

57 Under the regulations, a group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies with the requirement to provide contraceptive coverage if the eligible organization or group health plan furnishes a copy of the self-certification to each issuer that would otherwise provide such coverage in connection with the group health plan.

58. A group health insurance issuer that receives a copy of the self-certification must (a) expressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan; (b) provide separate payments for any required contraceptive services for plan participants and beneficiaries for so long as they remain enrolled in the plan.

59. For each plan year with respect to which the accommodation is in effect, a third party administrator or issuer required to provide or arrange payments for contraceptive services must provide to plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year.

60. The notice must specify that the eligible organization does not administer or fund contraceptive benefits, but that the third party administrator or issuer, as applicable, provides separate payments for contraceptive services, and must provide contact information for questions and complaints.

61. The regulations prohibit an issuer or third party administrator from passing the costs of the separate payments for contraceptive services on to the eligible organization, its group health plan, or plan participants or beneficiaries.

62. The Universities must choose among four options: (a) provide the coverage to which they object; (b) violate the regulations and incur penalties of $100 per day for each affected individual; (c) discontinue all health plan coverage for employees and/or students; or (d) self-certify that they qualify for the accommodation and provide that self-certification to their third party administrators or issuers.

63. If the Universities discontinue health plan coverage for employees, they would be subject to an annual penalty of $2,000 per full-time employee, after the first 30 employees.

64. The Universities believe that, within the operation of the regulations, completing and delivering the self-certification to their issuers or third party administrators would violate the Universities' sincere religious beliefs.

65. The Universities believe that providing employee or student health insurance that includes coverage for Plan B, ella, and/or IUDs would violate the Universities' sincere religious beliefs.

66. The Universities' missions include promoting the spiritual maturity of members of their respective communities by fostering obedience to and love for what they understand to be God's laws, including His restrictions on the unjustified taking of innocent human life.

67. The Universities believe that sinful behavior adversely affects their relationships with God.

68. Christian conviction, including respect for and dignity and worth of human life from the moment of conception, is a qualification for entry into and participation in the Universities' communities.

Respectfully submitted this 21st day of December, 2013,

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No. 15-191

U.S. District Court
Western District of Pennsylvania (Pittsburgh)
CIVIL DOCKET FOR CASE #: 2:12-cv-00207-JFC

GENEVA COLLEGE v. SEBELIUS et al	Date Filed: 02/21/2012
Assigned to: Chief Judge Joy Flowers Conti	Jury Demand: None
Case in other court: 3rd Circuit, 13-02814 3rd Circuit, 13-03536 3rd Circuit, 14-01374	Nature of Suit: 440 Civil Rights: Other
Cause: 42:2000 Civil Rights: Other	Jurisdiction: U.S. Government Defendant

* * *

05/31/2012	32	First AMENDED COMPLAINT against All Defendants, filed by GENEVA COLLEGE, WAYNE HEPLER, CARRIE KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES. (Baylor, Gregory) Modified on 6/1/2012 to edit docket text. (ksa2) (Entered: 05/31/2012)

* * *

08/02/2012	39	MOTION to Dismiss for Lack of Jurisdiction *or, in the alternative, to dismiss claims seven through twelve for failure*

		to state a claim by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Proposed Order) (Humphreys, Bradley) (Entered: 08/02/2012)
08/02/2012	40	BRIEF in Support re 39 Motion to Dismiss/Lack of Jurisdiction, *or, in the alternative, to dismiss claims seven through twelve for failure to state a claim* filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) (Entered: 08/02/2012)

* * *

09/13/2012	51	RESPONSE IN OPPOSITION to 39 Motion to Dismiss/Lack of Jurisdiction, filed by GENEVA

		COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES. (Attachments: # 1 Affidavit of Wayne L. Hepler) (Baylor, Gregory) (Entered: 09/13/2012)
		* * *
10/04/2012	54	REPLY in Support re 39 Motion to Dismiss/Lack of Jurisdiction, filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) Modified on 10/5/2012 to edit docket text. (ksa2) (Entered: 10/04/2012)
11/14/2012	55	SUPPLEMENTAL BRIEF in Support re 39 Motion to Dismiss/Lack of Jurisdiction, *pursuant to the Court's October 31, 2012* Order filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED

		STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) Modified on 11/15/2012 to add additional docket text. (ksa2) (Entered: 11/14/2012)
		* * *
12/03/2012	57	BRIEF in Opposition re 39 Motion to Dismiss/Lack of Jurisdiction, *pursuant to the Court's October 31, 2012 Order*, filed by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES. (Bowman, Matt) Modified on 12/4/2012 ERROR: Wrong event selected. Document removed from public view and redocketed. (ksa) (Entered: 12/03/2012)
12/03/2012	58	RESPONSE to 55 Brief in Support of Motion, filed by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER

		COMPANY, INC., WLH ENTERPRISES. "Document previously filed electronically" (ksa) (Entered: 12/04/2012)
		* * *
12/10/2012	59	NOTICE *of Supplemental Authority* by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES (Baylor, Gregory) (Entered: 12/10/2012)
12/18/2012	60	RESPONSE to 59 Notice, filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) (Entered: 12/18/2012)
12/18/2012	61	NOTICE *of Supplemental Authority* by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES

		DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY re 39 Motion to Dismiss/Lack of Jurisdiction, (Attachments: # 1 Exhibit Korte v. Sebelius, # 2 Exhibit Hobby Lobby Stores, Inc. v. Sebelius) (Humphreys, Bradley) (Entered: 12/18/2012)
12/19/2012	62	RESPONSE *and Notice of New Supplemental Authority* to 61 Notice, filed by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES. (Attachments: # 1 Exhibit 1 (Wheaton/BAC Order)) (Bowman, Matt) (Entered: 12/19/2012)
12/19/2012		NOTICE of Additional Supplemental Authority by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES. (Filed with document 62) (ksa2) (Entered: 12/20/2012)

* * *

12/31/2012	63	NOTICE *of Supplemental Authority, 7th Circuit Korte Opinion*, by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES (Attachments: # 1 Exhibit 7th Cir Opinion Korte) (Bowman, Matthew) (Entered: 12/31/2012)

* * *

01/12/2013	65	NOTICE *of Supplemental Authority* by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY re 39 Motion to Dismiss/Lack of Jurisdiction, (Attachments: # 1 Exhibit University of Notre Dame v. Sebelius, # 2 Exhibit Diocese of Peoria v. Sebelius, # 3 Colorado Christian University v. Sebelius) (Humphreys, Bradley) (Entered: 01/12/2013)

01/12/2013	66	RESPONSE to Plaintiffs' Notice of Supplemental Authority to 63 Notice,, filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Exhibit Autocam Corporation v. Sebelius, # 2 Exhibit Annex Medical, Inc. v. Sebelius) (Humphreys, Bradley) (Entered: 01/12/2013)
01/15/2013	67	NOTICE *of Supplemental Authority* by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY re 39 Motion to Dismiss/Lack of Jurisdiction. (Attachments: # 1 Exhibit Conestoga Wood Specialties Corp. v. Sebelius) (Humphreys,

		Bradley) (Entered: 01/15/2013)
01/16/2013	68	RESPONSE to 67 Notice, filed by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES. (Bowman, Matthew) (Entered: 01/16/2013)
01/25/2013	69	NOTICE *of Supplemental Authority* by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY re 39 Motion to Dismiss/Lack of Jurisdiction, (Attachments: # 1 Exhibit Persico v. Sebelius) (Humphreys, Bradley) (Entered: 01/25/2013)
01/31/2013	70	NOTICE *of Supplemental Authority* by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC.,

		WLH ENTERPRISES (Attachments: # 1 Exhibit 7th Circuit Decision) (Bowman, Matthew) (Entered: 01/31/2013)
02/12/2013	71	NOTICE *of Supplemental Authority* by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY re 39 Motion to Dismiss/Lack of Jurisdiction, (Attachments: # 1 Exhibit Conestoga Specialties Corporation v. Sebelius) (Humphreys, Bradley) (Entered: 02/12/2013)
02/18/2013	72	RESPONSE to 71 Notice, filed by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES. (Bowman, Matthew) (Entered: 02/18/2013)
02/18/2013	73	NOTICE *of Supplemental*

		Authority by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC., WLH ENTERPRISES (Attachments: # 1 Exhibit 1 Eighth Circuit Annex Medical, # 2 Exhibit 2 ND Tex Fort Worth) (Bowman, Matthew) (Entered: 02/18/2013)
03/06/2013	74	MEMORANDUM OPINION and ORDER granting in part and denying in part 39 Motion to Dismiss for Lack of Jurisdiction, as set forth in the accompanying memorandum opinion and order. Signed by Judge Joy Flowers Conti on 3/6/2013. (dmm) Modified on 3/7/2013 to add additional docket text. (ksa2) (Entered: 03/06/2013)
03/11/2013	75	MOTION for Preliminary Injunction by WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC. (Attachments: # 1 Proposed Order) (Bowman, Matthew) (Entered: 03/11/2013)
03/11/2013	76	BRIEF in Support re 75 Motion

for Preliminary Injunction filed by WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC. (Attachments: # 1 Exhibit 1 Affidavit of Wayne L. Hepler, # 2 Exhibit 2 Affidavit of Carrie E. Kolesar) (Bowman, Matthew) (Entered: 03/11/2013)

* * *

03/22/2013 78 BRIEF in Opposition re 75 Motion for Preliminary Injunction filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Exhibit Gilardi v. Sebelius (D.C. Cir.)) (Humphreys, Bradley) (Entered: 03/22/2013)

03/22/2013 79 NOTICE *of Supplemental Authorities* by WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER

		COMPANY, INC. re 75 Motion for Preliminary Injunction (Attachments: # 1 Exhibit 1 Lindsay Consent PI, # 2 Exhibit 2 Sharpe Consent to PI) (Bowman, Matthew) (Entered: 03/22/2013)
		* * *
04/03/2013	80	NOTICE *of Supplemental Authorities* by WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC. re 75 Motion for Preliminary Injunction (Attachments: # 1 Exhibit 1 Gilardi Injunction (D.C. Cir.), # 2 Exhibit 2 Hall Consent Injunction, # 3 Exhibit 3 Bick Consent Injunction) (Bowman, Matthew) (Entered: 04/03/2013)
04/05/2013	81	MOTION for Reconsideration re 74 Order on Motion to Dismiss/Lack of Jurisdiction, by GENEVA COLLEGE. (Attachments: # 1 Exhibit 1 Declaration of Kenneth A. Smith) (Baylor, Gregory) Modified on 4/8/2013. (jsp) (Entered: 04/05/2013)
		* * *
04/19/2013	83	FINDINGS OF FACT AND

		CONCLUSIONS OF LAW with respect to plaintiffs' motion for preliminary injunction (ECF No. 75). An appropriate order will follow. Signed by Judge Joy Flowers Conti on 4/19/2013. (dmm) (Entered: 04/19/2013)
04/19/2013	84	ORDER granting 75 Motion for Preliminary Injunction, as set forth in the accompanying order. Signed by Judge Joy Flowers Conti on 4/19/2013. (dmm) (Entered: 04/19/2013)
04/19/2013	85	BRIEF IN OPPOSITION to 81 Motion for Reconsideration, filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) Modified on 4/22/2013 to edit docket text. (ksa2) (Entered: 04/19/2013)
05/08/2013	86	MEMORANDUM OPINION and ORDER granting 81 Motion for Reconsideration, as set forth in the accompanying

		memorandum opinion and order. It is FURTHER ORDERED that defendants' motion to dismiss ECF No. 39 is Granted in Part, as follows: The claims set forth in count III and count IV are dismissed without prejudice; The arbitrary and capricious and contrary to law claims set forth in count VI are dismissed without prejudice; and the claim set forth in count V is dismissed with prejudice. It is FURTHER ORDERED that in all other respects defendants' motion to dismiss counts I, II, and VI is DENIED. Signed by Judge Joy Flowers Conti on 5/8/2013. (dmm) Modified on 5/9/2013 to add additional docket text. (ksa2) (Entered: 05/08/2013)
05/22/2013	87	MOTION for Preliminary Injunction by GENEVA COLLEGE. (Attachments: # 1 Proposed Order) (Baylor, Gregory) (Entered: 05/22/2013)
05/22/2013	88	BRIEF in Support re 87 Motion for Preliminary Injunction filed by GENEVA COLLEGE. (Attachments: # 1 Affidavit of Timothy R. Baird) (Baylor,

Gregory) (Entered: 05/22/2013)

* * *

06/05/2013	89	Memorandum in Opposition to Motion re 87 MOTION for Preliminary Injunction *by Geneva College* filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) Modified on 6/6/2013 to correctly title document. (ksa) (Entered: 06/05/2013)
06/17/2013	90	NOTICE OF APPEAL as to 84 Order on Motion for Preliminary Injunction by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. Motion for IFP N/A. Certificate of

		Appealability N/A. Court Reporters: Karen Earley and Juliann Kienzle. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. The Transcript Purchase Order form will NOT be mailed to the parties. The form is available on the Court's internet site. (Humphreys, Bradley) Modified on 6/18/2013 to add name of additional court reporter. (ksa) (Entered: 06/17/2013)
06/18/2013	91	FINDINGS OF FACT AND CONCLUSIONS OF LAW with respect to plaintiff Geneva College's motion for preliminary injunction (ECF No. 87). An appropriate order will follow. Signed by Judge Joy Flowers Conti on 6/18/2013. (dmm) (Entered: 06/18/2013)
06/18/2013	92	ORDER granting 87 Motion for Preliminary Injunction, as set forth in the accompanying order. Signed by Judge Joy Flowers Conti on 6/18/2013. (dmm) (Entered: 06/18/2013)
08/17/2013	94	NOTICE OF APPEAL as to 92

Order on Motion for Preliminary Injunction by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. Motion for IFP N/A. Certificate of Appealability N/A. Court Reporters: Karen Earley and Juliann Kienzle. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. The Transcript Purchase Order form will NOT be mailed to the parties. The form is available on the Court's internet site. (Humphreys, Bradley) Modified on 8/19/2013 to edit court reporters. (ksa) (Entered: 08/17/2013)

09/12/2013 96 MOTION for an Indicative Ruling Under Federal Rule of Civil Procedure 62.1 re 84 Order on Motion for

		Preliminary Injunction, 92 Order on Motion for Preliminary Injunction *if Remanded by the United States Court of Appeals for the Third Circuit* by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Proposed Order) (Humphreys, Bradley) Modified on 10/4/2013 to correctly title motion. (ksa) (Entered: 09/12/2013)
09/12/2013	97	BRIEF in Support re 96 Motion to Vacate, filed by TIMOTHY GEITHNER, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) (Entered: 09/12/2013)

* * *

10/03/2013	103	BRIEF in Opposition re 96 Motion to Vacate, *if remanded — i.e. motion for indicative order* filed by GENEVA COLLEGE, WAYNE HEPLER, CARRIE E. KOLESAR, THE SENECA HARDWOOD LUMBER COMPANY, INC.. (Attachments: # 1 Affidavit Exh 1 WLH Affidavit) (Bowman, Matthew) (Entered: 10/03/2013)
10/18/2013	98	Second AMENDED COMPLAINT against All Defendants, filed by CARRIE E. KOLESAR, WAYNE HEPLER, GENEVA COLLEGE, THE SENECA HARDWOOD LUMBER COMPANY, INC. (Baylor, Gregory) Modified on 10/2/2013 to edit docket text. (ksa) (Entered: 10/01/2013) 10/18/2013)

* * *

10/18/2013	104	ORDER denying 96 Motion for an Indicative Ruling pursuant to Federal Rule of Civil Procedure 62.1. Signed by Chief Judge Joy Flowers Conti on 10/18/2013. (ten) (Entered: 10/18/2013)

* * *

11/12/2013	105	Second MOTION for Preliminary Injunction by GENEVA COLLEGE. (Attachments: # 1 Proposed Order) (Baylor, Gregory) (Entered: 11/12/2013)
11/12/2013	106	BRIEF in Support re 105 Motion for Preliminary Injunction filed by GENEVA COLLEGE. (Baylor, Gregory) (Entered: 11/12/2013)

* * *

12/03/2013	107	BRIEF in Opposition re 105 Motion for Preliminary Injunction filed by TIMOTHY GEITHNER, JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) (Entered: 12/03/2013)
12/03/2013	108	MOTION to Dismiss *or, in the Alternative, for Summary Judgment* by TIMOTHY GEITHNER, JACOB J. LEW, THOMAS E. PEREZ,

		KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Exhibit Defendants' Statement of Material Facts, # 2 Proposed Order) (Humphreys, Bradley) Modified on 12/4/2013 ERROR: MULTIPLE RELIEF DOCUMENT FILED AS ONE RELIEF; RE-FILED BY COURT. (ksa) (Entered: 12/03/2013)
12/03/2013	109	BRIEF in Support re 108 Motion to Dismiss, *or, in the Alternative, for Summary Judgment* filed by TIMOTHY GEITHNER, JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Humphreys, Bradley) (Entered: 12/03/2013)

* * *

12/03/2013	110	CONCISE STATEMENT OF MATERIAL FACTS re Motion for Summary Judgment, by TIMOTHY GEITHNER, JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (ksa) (Entered: 12/04/2013)

* * *

12/06/2013	111	REPLY Brief in support of 105 Motion for Preliminary Injunction, 107 Brief in Opposition to Motion, filed by GENEVA COLLEGE. (Baylor, Gregory) Modified on 12/9/2013 to edit docket text. (ksa) (Entered: 12/06/2013)

* * *

12/20/2013	113	NOTICE *of Supplemental Authority* by GENEVA COLLEGE (Attachments: # 1 Roman Catholic Archdiocese of NY v. Sebelius Opinion) (Baylor, Gregory) (Entered:

		12/20/2013)
12/23/2013	114	FINDINGS OF FACT AND CONCLUSIONS OF LAW re: 105 Second MOTION for Preliminary Injunction filed by GENEVA COLLEGE. Signed by Chief Judge Joy Flowers Conti on 12/23/2013. (ten) Modified on 12/26/2013 to correctly title document. (ksa) (Entered: 12/23/2013)
12/23/2013	115	ORDER granting 105 Motion for Preliminary Injunction. Signed by Chief Judge Joy Flowers Conti on 12/23/2013. (ten) (Entered: 12/23/2013)
01/03/2014	116	RESPONSE IN OPPOSITION to 108 Motion to Dismiss and Motion for Summary Judgment filed by GENEVA COLLEGE. (Baylor, Gregory) Modified on 1/6/2014 document linkage corrected. Document also linked to Motion for Summary Judgment filed with document 108. (ksa) (Entered: 01/03/2014)
01/03/2014	117	RESPONSE IN OPPOSITION to 110 Concise Statement of Material Facts, filed by GENEVA COLLEGE. (Baylor, Gregory) (Entered: 01/03/2014)

* * *

02/11/2014	118	NOTICE OF APPEAL as to 115 Order on Motion for Preliminary Injunction by TIMOTHY GEITHNER, JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, HILDA SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. Motion for IFP N/A. Certificate of Appealability N/A. Court Reporters: Karen Earley, Juliann Kienzle and Virginia Pease. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. The Transcript Purchase Order form will NOT be mailed to the parties. The form is available on the Court's internet site. (Humphreys, Bradley) Modified on 2/12/2014 to add names of court reporters. (ksa) (Entered: 02/11/2014)
04/02/2014	120	ORDER of USCA as to 118

Notice of Appeal, filed by HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, THOMAS E. PEREZ, JACOB J. LEW, TIMOTHY GEITHNER, 94 Notice of Appeal, filed by HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER granting Motion by appellants to consolidate for the purposes of filing a single opening brief and a single reply brief. (ksa) Modified docket text on 9/9/2014. (tt) (Entered: 04/02/2014)

* * *

08/28/2014 123 ORDER of USCA as to 118 Notice of Appeal, filed by HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF THE

		TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, THOMAS E. PEREZ, JACOB J. LEW, TIMOTHY GEITHNER that the foregoing motion to lift the stay is Denied at this time. The government shall advise the Court of its position not later than 9/5/2014. (ksa) (Entered: 09/16/2014)
09/04/2014	121	ORDER of USCA as to 90 Notice of Appeal, filed by UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, dismissing case pursuant to Fed. R. App. P 42(b). Modified docket text on 9/9/2014. (tt) (Entered: 09/04/2014)
		* * *
10/10/2014	125	PERMANENT INJUNCTION. Signed by Chief Judge Joy Flowers Conti on 10/10/2014. (ten) (Entered: 10/10/2014)

10/10/2014	126	JUDGMENT in favor of Wayne L. Hepler, individually, and in his capacity as sole proprietor of WLH Enterprises, Carrie E. Kolesar, and The Seneca Hardwood Lumber Company, Inc. and against Sylvia Burwell, in her official capacity as Secretary of the United States Department of Health and Human Services, Thomas Perez, in his official capacity as Secretary of the United States Department of Labor, Jacob Lew, in his official capacity as Secretary of the United States Department of the Treasury, the United States Department of Health and Human Services, the United States Department of Labor, and the United States Department of the Treasury. Signed by Chief Judge Joy Flowers Conti on 10/10/2014. (ten) (Entered: 10/10/2014)

* * *

02/11/2015	130	JUDGMENT OF USCA as to 118 Notice of Appeal, filed by HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

		UNITED STATES DEPARTMENT OF LABOR, THOMAS E. PEREZ, JACOB J. LEW, TIMOTHY GEITHNER, 94 Notice of Appeal, filed by HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER Reversing judgments/orders of the district court. Mandate will follow. (pdb3,) (Entered: 02/11/2015)
		* * *
04/15/2015	133	MANDATE of USCA issued as to 118 Notice of Appeal, filed by HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, THOMAS E. PEREZ, JACOB J. LEW, TIMOTHY GEITHNER, 94 Notice of Appeal, filed by HILDA SOLIS, KATHLEEN SEBELIUS, UNITED STATES

		DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER. IT IS HEREBY ORDERED and ADJUDGED that the judgments of the District Court entered 6/18/2013, 12/20/2013 and 12/23/2013 be and the same are hereby reversed. (Attachments: # 1 mandate letter, # 2 opinion) (tmm3,) Modified on 4/16/2015 to add additional docket text. (ksa) (Entered: 04/15/2015)
05/06/2015	134	USCA ORDER Motion by Appellee Geneva College to Recall and Stay Mandate is temporarily granted pending action by the Supreme Court in Zubik v. Burwell, No. 14A1065 (S. Ct.). (Entered: 05/06/2015)

U.S. Court of Appeals for the Third Circuit

Court of Appeals Docket #: 14-6026

GENEVA COLLEGE, et al v. SECRETARY UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al	Docketed: 08/22/2013 Terminated: 02/11/2015 Nature of Suit: 2440 Other Civil Rights Case Type Information: 1) civil 2) USA as party 3) civil rights
Trial Judge: Joy Flowers Conti Case: 2-12-cv-00207F	

08/22/2013 CIVIL CASE DOCKETED. Notice filed by Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Department of the Treasury in District Court No. 2-12-cv-00207. (TMM)

* * *

09/04/2013 ECF FILER: Concise Summary of the Case filed by Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, received. (ABK)

* * *

01/02/2014 ORDER (SMITH and HARDIMAN, Circuit Judges) granting Motion to hold appeal at 13-2814 in abeyance pending the Supreme Court's decision

in Conestoga Wood Specialties Authoring Judge. [13-2814, 13-3536]—[Edited 01/03/2014 by LML] (SLC)

* * *

02/20/2014 CLERK ORDER The actions at Nos. 13-2814, 13-3536, and 14-1374 are hereby consolidated for all purposes. The parties are advised that all motions and briefs must be electronically filed in all cases on the Court's electronic case filing (ECF) system. The parties are further advised that case opening forms for later filed appeals must be filed in the new appeals and not re-filed in earlier appeals in which the forms were previously filed, filed. [13-2814, 13-3536, 14-1374] (TMM)

* * *

03/24/2014 ECF FILER: Reply by Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in Support of Motion to Consolidate Appeals, filed. Certificate of Service dated 03/24/2014. [13-3536, 13-2814, 14-1374, 14-1376, 14-1377]--[Edited 03/24/2014 by TMM] (ACJ)

04/02/2014 ORDER (VANASKIE, Circuit Judge) Motion by appellants to consolidate for

the purposes of filing a single opening brief and a single reply brief is granted, filed. Panel No.: BCO-060. Vanaskie, Authoring Judge. [13-3536, 14-1374, 14-1376, 14-1377] (TMM)

05/01/2014 ORDER (Clerk) On April 2, 2014, the Court granted Appellants' motion to consolidate Appeal Nos. 13-3536, 14-1374, 14-1376, and 14-1377 for purposes of filing of a single opening brief and a single reply brief, which essentially consolidated the 4 cases for all purposes. Appellees are encouraged to consult with one another regarding the contents of their briefs as the Court disfavors repetitive briefs. Appellees may file a consolidated brief or join in or adopt portions by reference. It is noted that a 5th appeal, No. 13-2814, has been stayed pending the Supreme Court's disposition of a petition for writ of certiorari in Conestoga Wood Specialties Corporation v. Sebelius, Supreme Court Case No. 13-356. Given this, Appeal No. 13-2814 will no longer be consolidated with Nos. 13-3536 and 14-1374, but rather a decision in the District Court on a motion for preliminary injunction. As the District Court has ruled on that motion and the order is on appeal in No. 14-1374, the stay on No. 13-3536 is hereby lifted. The briefing and

scheduling order entered in Nos. 13-2814 and 13-3536 on October 28, 2013 is hereby vacated. A separate briefing and scheduling order will be issued in No. 13-2814 once the stay in that case has been lifted. The following briefing schedule shall now apply to Appeal Nos. 13-3536, 14-1374, 14-1376, and 14-1377· Step 1: Opening brief and the joint appendix by Appellants, to be filed and served within 40 days of the date of this order; Step 2: Responsive briefs by Appellees, to be filed and served within 30 days of the date of service of Appellants' brief; and Step 3: Reply brief, if any, by Appellants, to be filed and served within 14 days of the date of service of the last Appellees' brief filed. [13-2814, 13-3536, 14-1374, 14-1376, 14-1377] (TMM)

06/10/2014 ECF FILER: ELECTRONIC BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed. Certificate of Service dated 06/10/2014 by ECF. [Entry has been spread to case no. 14-1377] [13-3536,

14-1374, 14-1376, 14-1377]—[Edited 06/10/2014 by EMA] (ABK)

06/10/2014 ECF FILER: ELECTRONIC JOINT APPENDIX on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed. Certificate of service dated 06/10/2014 by ECF. [13-3536, 14-1374, 14-1376, 14-1377] (ABK)

* * *

06/10/2014 ECF FILER: ELECTRONIC ADDENDUM to JOINT APPENDIX entitled "Joint Appendix" on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377 containing the District Court Docket, filed. Certificate of service dated 06/10/2014 by ECF. [Entry edited by Clerk's Office to reflect the correct event and contents] [13-3536, 14-1374,

14-1376, 14-1377]—[Edited 06/12/2014 by EMA] (ABK)

* * *

06/17/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Amici Julian Bond, American Civil Liberties Union, and American Civil Liberties Union of Pennsylvania in support of Appellant/Petitioner, filed. Certificate of Service dated 06/17/2014 by ECF. [13-3536, 14-1374, 13-1376 & 13-1377] (SJR)

* * *

06/17/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Americans United for Separation of Church and State in support of Appellant/Petitioner, filed. Certificate of Service dated 06/17/2014 by ECF [13-3536, 14-1374, 14-1376, 14-1377] (ANK)

* * *

06/17/2014 ECF FILER: Motion filed by National Women's Law Center; American Association of University Women (AAUW); American Federation of State, County and Municipal Employees (AFSCME); Ibis Reproductive Health; Feminist Majority Foundation; Legal Momentum; Merger Watch; NARAL Pro Choice America; National Organization for Women (NOW) Foundation; National Partnership for

Women and Families; Planned Parenthood Association of the Mercer Area; Planned Parenthood of Central and Greater Northern New Jersey, Inc.; Planned Parenthood of Delaware; Planned Parenthood Keystone; Planned Parenthood of Metropolitan New Jersey; Planned Parenthood of Southeastern Pennsylvania; Planned Parenthood of Southern New Jersey; Planned Parenthood of Western Pennsylvania; Population Connection; Raising Women's Voices for the Health Care We Need; Service Employees International Union (SEIU) to proceed as Amicus Curiae in support of Appellant/Petitioner. Certificate of Service dated 06/17/2014. [13-3536, 14-1374, 14-1376. 14-1377] (CED)

06/17/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Amici National Women's Law Center; American Association of University Women (AAUW); American Federation of State, County and Municipal Employees (AFSCME); Ibis Reproductive Health; Feminist Majority Foundation; Legal Momentum, Merger Watch;NARAL Pro Choice America; National Organization for Women (NOW) Foundation; National Partnership for Women and Families; Planed

Parenthood Association of the Mercer Area; Planned Parenthood of Central and Greater Northern New Jersey, Inc.; Planned Parenthood of Delaware; Planned Parenthood Keystone; Planned Parenthood of Metropolitan New Jersey; Planned Parenthood of Southeastern Pennsylvania; Planned Parenthood of Southern New Jersey; Planned Parenthood of Western Pennsylvania; Population Connection; Raising Women's Voices for the Health Care We Need; Service Employees International Union (SEIU) to proceed as Amicus Curiae in support of Appellant/Petitioner. Certificate of Service dated 06/17/2014. [13-3563, 14-1374, 14-1376, 14-1377] (CED)

* * *

07/08/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Proposed Amici-Appellants American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Asian Americans Advancing Justice Los Angeles, California Womens Law Center, Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women Forum, National Family Planning & Reproductive Health Association, National Health Law

Program, National Hispanic Medical Association, National Latina Institute for Reproductive Health, National Womens Health Network and Sexuality Information & Education Council of the United States in 13-3536, 14-1374, 14-1376, Proposed Amici-Appellants American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Asian Americans Advancing Justice Los Angeles, California Womens Law Center, Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Hispanic Medical Association, National Womens Health Network, Sexuality Information & Education Council of the United States and Proposed Intervenor-Appellant National Latina Institute for Reproductive Health in 14-1377 Amicus National Health Law Program, et al. in support of Appellant/Petitioner, filed. Certificate of Service dated 06/17/2014 by ECF [13-3536, 14-1374, 14-1376, 14-1377] (SS)

07/14/2014 ORDER (SHWARTZ, Circuit Judge) The foregoing Motion by Americans United for Separation of Church and

State to proceed as Amicus Curiae in support of Appellant is granted, filed. Panel No.: CCO-102. Judge: SHWARTZ, Authoring. Appearance Form on or before 07/21/2014. Disclosure Statement on or before 07/21/2014. [13-3536, 14-1374, 14-1376, 14-1377] (EMA)

* * *

07/24/2014 ORDER (GREENAWAY JR., Circuit Judge) granting Motion Julian Bond, American Civil Liberties and American Civil Liberties Union of Pennsylvania for leave to proceed as Amicus Curiae in Support of Appellants, filed. Panel No.: ACO-099. Greenaway, Jr., Authoring Judge. [13-3536, 14-1374, 14-1376, 14-1377] (MCW)

* * *

07/24/2014 ORDER (GREENAWAY JR., Circuit Judge) granting Motion by National Women's Law Center, et al for leave to proceed as amicus curiae in support of Appellants, filed. Panel No.: ACO-100. Greeneaway, Jr., Authoring Judge. [13-3536, 14-1374, 14-1376, 14-1377] (MCW)

* * *

07/24/2014 ORDER (GREENAWAY JR., Circuit Judge) granting Motion by National Health Law Program, et al for leave to proceed as amicus curiae in support of Appellants, filed. Panel No.: ACO-101.

Greenaway, Jr., Authoring Judge. [13-3536, 14-1374, 14-1376, 14-1377] (MCW)

* * *

07/28/2014 ECF FILER: ELECTRONIC BRIEF on behalf of Appellees Geneva College, Seneca Hardwood Lumber Company Inc, Carry E. Kolesar and in Wayne Helper in13-3536 & 14-1374, filed. Certificate of Service dated 07/28/2014 by ECF. [13-3536, 14-1374] [Entry edited by the Clerk's Office to reflect all filers]--[Edited 07/29/2014 by MS] (GSB)

* * *

07/30/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Amicus Curiae Liberty Life and Law Foundation in support of Appellee/Respondent, filed. Certificate of Service dated 07/30/2014 by ECF F.R.A.P 29(a) Permission: YES. [13-3536, 14-1374] (DJD)

* * *

08/01/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Amicus Appellees Association of Gospel Rescue Missions, et al. in support of Appellee/Respondent, filed. Certificate of Service dated 08/01/2014 by ECF F.R.A.P 29(a) Permission: YES. [13-3536, 14-1374] (KWC)

* * *

08/04/2014 ECF FILER: Request by Appellee Geneva College in 13-3536, 14-1374 for Oral Argument. [SEND TO MERITS] [13-3536, 14-1374] (GSB)

* * *

08/11/2014 ECF FILER: ELECTRONIC REPLY BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed. Certificate of Service dated 08/11/2014 by ECF. [13-3536, 14-1374, 14-1376, 14-1377] (PN)

* * *

09/23/2014 ECF FILER: Letter dated 09/23/2014 , filed pursuant to Rule 28(j) from counsel for Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377. This document will be SENT TO THE MERITS PANEL, if/when applicable. [13-3536, 14-1374, 14-1376, 14-1377] (PN)

09/24/2014 ECF FILER: Response filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 to Rule 28(j) letter. Certificate of Service dated 09/24/2014. This document will be SENT TO THE MERITS PANEL, if/when applicable. [14-1376, 13-3536, 14-1374, 14-1377] (PMP)

* * *

10/07/2014 CLERK'S LETTER to counsel written at the direction of the Court. At the direction of the Court, pursuant to counsel's 28j letter dated September 23, 2014, Counsel are to file Supplemental briefing limited to 8 pages. Briefs are due within 14 days by Tuesday, October 21, 2014. [13-3536, 14-1374, 14-1376, 14-1377] (TLG)

10/21/2014 ECF FILER: ELECTRONIC SUPPLEMENTAL BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United

States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed in accordance to the Court's letter of 10/07/2014. Certificate of Service dated 10/21/2014 by ECF [13-3536, 14-1374, 14-1376, 14-1377]—[Edited 10/21/2014 by TLG] (PN)

10/21/2014 ECF FILER: ELECTRONIC SUPPLEMENTAL BRIEF on behalf of Appellee Geneva College in 13-3536, filed. Certificate of Service dated 10/21/2014 by ECF. [13-3536, 14-1374] (GSB)

* * *

11/14/2014 ECF FILER: Letter dated 11/14/2014 , filed pursuant to Rule 28(j) from counsel for Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377. This document will be SENT TO THE MERITS PANEL, if/when applicable. [13-3536, 14-1374, 14-1376, 14-1377] (ACJ)

11/17/2014 ECF FILER: Response filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center

Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 to Rule 28(j) letter. Certificate of Service dated 11/17/2014. This document will be SENT TO THE MERITS PANEL, if/when applicable. [14-1376, 14-1377, 14-1374, 13-3536]—[Edited 11/17/2014 by TMM] (PMP)

11/18/2014 ECF FILER: Response filed by Appellee Geneva College to Rule 28(j) letter. Certificate of Service dated 11/18/2014. This document will be SENT TO THE MERITS PANEL, if/when applicable. [13-3536, 14-1374, 14-1376, 13-1377]—[Edited 11/18/2014 by TMM] (GSB)

11/19/2014 COURT MINUTES OF ARGUED/SUBMITTED CASES. [13-3536, 14-1374, 14-1376, 14-1377, 14-1328, 14-1406, 12-4574] (TLG)

11/19/2014 ARGUED on Wednesday, November 19, 2014. Panel: McKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges. Gregory S. Baylor arguing for Appellees Geneva College, Wayne Hepler and Carrie E. Kolesar; Paul M. Pohl arguing for Appellees Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and Roman Catholic Diocese of Pittsburgh; Mark B. Stern arguing for Appellants Secretary United States Department

of the Treasury, United States Department of Health and Human Services and United States Department of Labor. [13-3536, 14-1374, 14-1376, 14-1377] (TLG)

02/03/2015 ECF FILER: Letter dated 02/03/2015 , filed pursuant to Rule 28(j) from counsel for Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 This document will be SENT TO THE MERITS PANEL, if/when applicable. [14-1376, 13-3536, 14-1374, 14-1377] (PMP)

02/09/2015 ECF FILER: Response filed by Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377 to Rule 28(j) letter. Certificate of Service dated 02/09/2015. This document will be SENT TO THE MERITS PANEL, if/when applicable. [13-3536, 14-1374, 14-1376, 14-1377] (PN)

02/11/2015 PRECEDENTIAL OPINION Coram: MCKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges. Total Pages: 49. Judge: RENDELL Authoring. [13-3536, 14-1374, 14-1376, 14-1377] (PDB)

02/11/2015 JUDGMENT, Reversed. Costs taxed against Appellees. All of the above in accordance with the Opinion of this Court. [13-3536, 14-1374, 14-1376, 14-1377] (PDB)

03/30/2015 ECF FILER: Petition filed by Appellee Geneva College in 13-3536, 14-1374 for Rehearing before original panel and the court en banc. Certificate of Service dated 03/30/2015. [13-3536, 14-1374] (GSB)

04/13/2015 ORDER (MCKEE, Chief Judge, RENDELL, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, SHWARTZ, KRAUSE and SLOVITER*, Circuit Judges) denying Petition for Panel Rehearing and En Banc Rehearing filed by Appellee Geneva College, filed. Rendell, Authoring Judge. [13-3536, 14-1374] *Honorable Dolores K. Sloviter's vote is limited to panel rehearing only. (TMM)

04/15/2015 MANDATE ISSUED, filed. [14-1376, 13-3536, 14-1374, 14-1377] (TMM)

04/21/2015 ECF FILER: Motion filed by Appellee

Geneva College to recall and stay mandate. Certificate of Service dated 04/21/2015. [13-3536, 14-1374]—[Edited 04/21/2015 by TMM] (GSB)

* * *

05/01/2015 ECF FILER: Response filed by Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374 to court order , Motion Mandate (recall, stay or issue), Motion to stay mandate. Certificate of Service dated 05/01/2015. [13-3536, 14-1374] (ABK)

05/06/2015 ORDER (MCKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges) Motion by Appellee Geneva College to Recall and Stay Mandate is temporarily granted pending action by the Supreme Court in Zubik v. Burwell, No. 14A1065 (S. Ct.), filed. Authoring Judge Rendell. [13-3536, 14-1374] (Corrected Order attached and NDA Resent)—[Edited 05/06/2015 by TMM] (TMM)

07/10/2015 U.S. Supreme Court Letter dated 06/30/2015 granting Appellee Geneva College in 13-3536, 14-1374 an extension of time to and including

	08/11/2015 to file petition for writ of certiorari. Supreme Court Application No. 15A1. [13-3536, 14-1374] (CRG)
07/22/2015	ECF FILER: STATUS REPORT received from Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377.. Certificate of Service dated 07/22/2015. [13-3536, 14-1374, 14-1376, 14-1377] (ABK)
07/23/2015	ECF FILER: Response filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 to status report. Certificate of Service dated 07/23/2015. [14-1376, 13-3536, 14-1374, 14-1377] (PMP)
08/13/2015	NOTICE from U.S. Supreme Court. Petition for Writ of Certiorari filed by Geneva College on 08/11/2015 and placed on the docket 08/12/2015 as Supreme Court Case No. 15-191. [13-3536, 14-1374] (CND)

11/06/2015 NOTICE of U.S. Supreme Court disposition at No. 15-191. Petition for Writ of Ceriorari filed by Geneva College granted on 11/06/2015. [13-3536, 14-1374] (LML)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GENEVA COLLEGE; WAYNE L. HEPLER, in his personal capacity and as owner and operator of the sole proprietorship WLH Enterprises; THE SENECA HARDWOOD LUMBER COMPANY, INC., a Pennsylvania Corporation; and CARRIE E. KOLESAR Plaintiffs, v. KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor; JACOB J. LEW, in his official capacity as Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT	Case No.. 2:12-cv-00207-JFC

OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF LABOR; and UNITED STATES DEPARTMENT OF THE TREASURY,	)
Defendants.	)

SECOND AMENDED COMPLAINT

Plaintiffs, by their attorneys, state as follows:

NATURE OF THE ACTION

1. This lawsuit challenges regulations issued by Defendants under the 2010 Patient Protection and Affordable Care Act that compel employee and student health insurance plans to provide free coverage of contraceptive services, including so-called "emergency contraceptives" that cause early abortions.

2. Plaintiff Geneva College is a Christ-centered institution of higher learning. It believes that God has condemned the intentional destruction of innocent human life. The College holds, as a matter of religious conviction, that it would be sinful and immoral for Geneva intentionally to participate in, pay for, facilitate, enable, or otherwise support access to abortion, which destroys human life. It holds that one of the prohibitions of the Ten Commandments ("thou shalt not murder") precludes it from facilitating, assisting in, or enabling the use of drugs that can and do destroy very young human beings in the womb.

3. Plaintiffs Wayne L. Hepler and Carrie E. Kolesar are a father and daughter who, with several of Mr. Hepler's other children, own The Seneca Hardwood Lumber Company, Inc. Located in Cranberry, Pennsylvania, Seneca Hardwood is a lumber business that Mr. Hepler runs in conjunction with a sawmill that he operates as WLH Enterprises, his sole proprietorship. The Hepler family owners and operators of these businesses are practicing Catholic Christians who in their personal lives and their operation of Seneca and WLH adhere to Catholic Church teachings on sexuality and the sanctity of innocent human life. Following these beliefs, the Hepler family has for multiple years omitted abortifacients, contraception, sterilization, and related education and counseling from their health insurance plan covering themselves and their employees and family members. (Seneca Hardwood Lumber Company and the Heplers, including Wayne Hepler's activities in WLH Enterprises, collectively are referred to in this Second Amended Complaint as "the Hepler Plaintiffs.")

4. The regulations impact the Hepler Plaintiffs not only as employers, but as employees. It robs the individual Hepler family members of morally acceptable health insurance, instead potentially forcing them and their daughters to receive coverage for "free" contraception and sterilization from the health insurance plan they will be forced to co-purchase.

5. Neither the College nor the Hepler Plaintiffs qualify for the extraordinarily narrow religious exemption from the regulations. That exemption protects only "churches, their integrated auxiliaries,

and conventions or associations or churches" and "the exclusively religious activities of any religious order."

6. For purely secular reasons, the government has elected not to impose the challenged regulations upon thousands of other organizations. Employers with "grandfathered" plans and favored others are exempt from these rules.

7 Defendants have offered entities like the College—but not ones like the Hepler Plaintiffs—a so-called "accommodation" of their religious beliefs and practices. However, the alleged accommodation fails. It still conscripts Geneva into the government's scheme, forces the College to obtain an insurer and to submit a form that specifically causes that insurer to pay for the objectionable drugs, so that such coverage will accrue to the College's own employees, due to the fact that those employees have insurance as an employee benefit from the College and from that insurer.

8. Under the supposed accommodation, Defendants continue to treat entities like the College as second-class religious organizations, not entitled to the same religious freedom rights as substantially similar entities that qualify for the exemption. Defendants' rationale for entirely exempting churches and integrated auxiliaries from the regulations – their employees are likely to share their religious convictions – applies equally to the College. Yet, Defendants refuse to exempt the College, offering only an flimsy, superficial, and utterly semantic "accommodation" that falls woefully short of addressing the substance of its concerns. And the

Hepler Plaintiffs do not receive even that much consideration from Defendants.

9. If Plaintiffs follow their religious convictions and decline to participate in the government's scheme, they will face, among other injuries, enormous fines that will cripple their respective operations and/or the loss of morally acceptable health insurance.

10. By unconscionably placing Plaintiffs in this untenable position, Defendants have violated the Religious Freedom Restoration Act; the Free Exercise, Establishment and Free Speech Clauses of the First Amendment to the United States Constitution; the Due Process Clause of the Fifth Amendment; and the Administrative Procedure Act.

11. Plaintiffs therefore respectfully request that this Court vindicate their rights through declaratory and permanent injunction relief, among other remedies.

IDENTIFICATION OF PARTIES AND JURISDICTION

12. Plaintiff Geneva College is a Christ-centered institution of higher learning located in Beaver Falls, Pennsylvania. It is a Pennsylvania not-for-profit corporation.

13. Plaintiff Wayne L. Hepler lives in Cranberry, Pennsylvania. He is 58% owner, President, and Secretary of The Seneca Hardwood Lumber Company, Inc. He is also the sole owner of WLH Enterprises. WLH Enterprises is a sawmill and sole proprietorship owned by Wayne L. Hepler. It is located at 5939 Route 38, Emlenton, Pennsylvania.

WLH Enterprises employees participate in the health insurance plan of Seneca Hardwood. As an employee, Mr. Hepler is a participant in the health insurance plan of Seneca Hardwood, and beneficiaries of his plan include his wife, their two high-school aged daughters, another daughter under age 26, two sons in college, and one son under age 26.

14. Plaintiff The Seneca Hardwood Lumber Company, Inc., is a Pennsylvania Corporation located at 212 Seneca Hardwood Road, Cranberry, Pennsylvania. The Seneca Hardwood Lumber Company, Inc., is designated as an S-corporation.

23. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and Fed. R. Civ. P 65, and to award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

24. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). A substantial part of the events or omissions giving rise to the claim occurred in this district, and the Plaintiffs are located in this district.

FACTUAL ALLEGATIONS

I. Geneva College's Religious Beliefs and Provision of Educational Services in General

25. Geneva College was established in 1848 by the Reformed Presbyterian Church of North America (RPCNA). The College's mission is to glorify God by educating and ministering to a diverse community of

students in order to develop servant-leaders who will transform society for the kingdom of Christ.

26. The College pursues this mission through biblically-based programs and services anchored in the historic, evangelical, and Reformed Christian faith. The vocationally-focused curriculum is rooted in the liberal arts and sciences and is delivered through traditional and specialized programs.

27. Central to the mission of Geneva College is its desire to glorify God. The College believes that the Bible teaches that the lives of all people (especially followers of Jesus Christ) should glorify God. The College embraces the oft-quoted statement of the Westminster Shorter Catechism: "Man's chief end is to glorify God and enjoy Him forever."

28. Geneva College believes that one of its central purposes is "to see the glory of God in all the aspects of His Word and world. This is furthered by having students, faculty and, ultimately, the whole of academe see the glory that is God's in His creation, deeds, disciples and, above all, in His Son, the Lord of Glory."

29. Geneva College follows the creedal commitment in the application to many of its policies and practices that flow from the Reformed Presbyterian Church of North America. That commitment is derived from the Holy Bible and is articulated in the Westminster Confession of Faith, the Westminster Larger and Shorter Catechisms, and the Testimony of the RPCNA.

30. Members of Geneva's Board of Corporators, which governs the College, must be members in good standing of the Reformed Presbyterian Church of

North America. The Synod of the RPCNA elects all members of the Board of Corporators. The Board of Corporators exercises control for the RPCNA over the purpose, policies, and property of the College.

31. The RPCNA is a church and/or convention or association of churches and thus need not file an informational return with the Internal Revenue Service under 26 U.S.C. § 6033(a)(3)(A)(i).

32. If the College were an "integrated auxiliary" of the RPCNA, it would fall within the scope of the narrow religious exemption to the HHS Mandate. Because the College and the RPCNA chose not to structure their relationship this way, the College falls outside the scope of the exemption and is thus subject to the Mandate.

33. A Board of Trustees operates Geneva College under authority delegated by the Board of Corporators. Trustees must be members of either the RPCNA or other Reformed and Evangelical Christian congregations.

34. Geneva College draws its faculty, staff, and administration from among those who profess faith in Christ and otherwise agree with the College's Christian convictions, including its convictions about the sanctity and dignity of human life.

35. Although the College does not require a profession of faith as a prerequisite for student admission, it does give priority in its recruitment to the evangelical Christian community and seeks to create a Christian peer influence among students. All students are expected to live by the standards of historic Christian morality, including those expressed in the Ten Commandments.

36. Geneva College has a long history of providing education to individuals from segments of society that have been disenfranchised. In the years following the Emancipation Proclamation of 1863, a significant percentage of its students were freed black slaves. Geneva was among the earliest schools to matriculate women to a full degree program. The College is building on that history through special efforts to recruit and retain African-American, Latino, other minority, and international students, believing that its student body should reflect the diversity of our world.

37 At certain points in its history, Geneva has found it necessary to engage in civil disobedience of unjust laws. In the 1860s, Geneva College was a station on the Underground Railroad, which sought, against the law of the land, to hide and transport escaped slaves. The College believed that the institution of slavery was inimical to biblical faith.

38. The College's current total enrollment (including traditional undergraduate, adult undergraduate, and graduate students) is approximately 1,850.

39. The College has approximately 350 employees, and about 280 of them are full-time. There are approximately 95 full-time faculty members.

II. The Religious Beliefs of Geneva College and of the Reformed Presbyterian Church of North America Regarding Abortion

40. The RPCNA Testimony, one articulation of the Church's religious beliefs, declares as follows: "Unborn children are living creatures in the image of God. From the moment of conception to birth they

are objects of God's providence as they are being prepared by Him for the responsibilities and privileges of postnatal life. Unborn children are to be treated as human persons in all decisions and actions involving them. Deliberately induced abortion, except possibly to save the mother's life, is murder."

41. In support of this declaration, the Testimony cites Exodus 20:13 ("thou shalt not murder"), Exodus 21:22-23, and Psalm 139:13-16, all of which the College believes are part of the inerrant and infallible Word of God.

42. The Westminster Larger Catechism, another articulation of the Church's beliefs, sets forth the duties required by the Commandment against murder (which the Catechism numbers as the Sixth Commandment). These include "all careful studies, and lawful endeavors, to preserve the life of ourselves and others by resisting all thoughts and purposes, subduing all passions, and avoiding all occasions, temptations, and practices, which tend to the unjust taking away the life of any and protecting and defending the innocent." In support of this statement, the Larger Catechism cites the following Scripture verses: Eph. 5:28-29; 1 Kings 18:4; Jer. 26:15-16; Acts 23:12, 16-17, 21, 27; Eph. 4:26-27; 2 Sam. 2:22; Deut. 22:8; Matt. 4:6-7; Prov. 1:10-11, 15-16; 1 Sam. 24:12; 1 Sam. 26:9-11; Gen. 37:21-22; Ps. 82:4; Prov. 24:11-12; 1 Sam. 14:45; Jas. 5:7-11; Heb. 12:9; 1 Thess. 4:11; 1 Pet. 3:3-4; Ps. 37:8-11; Prov. 17:22; Prov. 25:16, 27; 1 Tim. 5:23; Isa. 38:21; Ps. 127:2; Eccl. 5:12; 2 Thess. 3:10, 12; Prov. 16:26; Eccl. 3:4, 11; 1 Sam. 19:4-5; 1 Sam. 22:13-14; Rom. 13:10; Luke 10:33-34; Col. 3:12-13; Jas. 3:17; 1 Pet. 3:8-11, Prov. 15:1; Judg. 8:1-3; Matt. 5:24; Eph. 4:2,

32; Rom. 12:17, 20-21; 1 Thess. 5:14; Job 31:19-20; Matt. 25:35-36; and Prov. 31:8-9.

43. The Westminster Larger Catechism also identifies "the sins forbidden in the sixth commandment." Among these are "all taking away the life of ourselves, or of others, except in case of public justice, lawful war, or necessary defence; the neglecting or withdrawing the lawful and necessary means of preservation of life; and whatsoever else tends to the destruction of the life of any." In support of this statement, the Larger Catechism cites the following Scripture verses: Acts 16:28; Gen. 9:6; Num. 35:31, 33; Jer. 48:10; Deut. 20:1-20; Ex. 22:2-3; Matt. 25:42-43; Jas. 2:15-16; Eccl. 6:1-2; Matt. 5:22; 1 John 3:15; Lev. 19:17; Prov. 14:30; Rom. 12:19; Eph. 4:31; Matt. 6:31, 34; Luke 21:34; Rom. 13:13; Eccl. 12:12; Eccl. 2:22-23; Isa. 5:12; Prov. 15:1; Prov. 12:18; Ezek. 18:18; Ex. 1:14; Gal. 5:15; Prov. 23:29; Num. 35:16-18, 21; and Ex. 21:18-36.

44. The Foreword to a recent re-issue of the 1888 *History of the Reformed Presbyterian Church in America* observes that the Testimony "has been updated to keep pace." As an example, the Foreword states that "[t]he Church of 1888 did not make reference to willful abortion, as that was not an issue. Today, however, abortion is one of the most dynamic social controversies, and we should praise God that he has enabled this church to maintain a testimony against such murder."

45. Geneva College unreservedly shares the RPCNA's religious views regarding abortion, believing that the procurement, participation in, facilitation of, or payment for abortion (including

abortion-causing drugs like Plan B and ella) violates the Commandment against murder (and the interpretation of that Commandment in the Westminster Standards) and is inconsistent with the dignity conferred by God on creatures made in His image.

46. By "conception," "pregnancy," "abortion" and related concepts referenced herein regarding the sanctity of innocent human life and prohibitions on its destruction, Geneva College understands such concepts to recognize and protect the lives of human beings from the moment of fertilization.

47. The College has participated in Life Ring, a community-wide pro-life awareness campaign that encourages churches with bell towers to ring their bells in mourning on the anniversary of the U.S. Supreme Court's 1973 decision in *Roe v. Wade*.

48. Geneva has sponsored public events in which it has explored the religious dimensions of the abortion issue. These include an October 18, 2011, panel discussion entitled, "Abortion: Is it an Issue of Justice for the Mother or Unborn Child?"

49. Geneva's publications frequently highlight the pro-life activities of students, alumni, and staff. For example, the March 2005 issue of a College newsletter reported on a letter sent by the College's student-led pro-life group to President George W. Bush, supporting the "culture of life" discussed in the President's 2005 state of the union address. The February/March 2009 issue of the newsletter reported on the volunteer work of three Geneva staff members at a local pro-life pregnancy resource center. On January 21, 2009, Brenda Schaeffer

delivered a message at the College chapel service regarding the value of human life and the heartache she experienced after having an abortion.

50. In January 2012, a group of Geneva College students and a staff member went to Washington, DC, to participate in the annual March for Life, at which they expressed their support for the sanctity of human life and their opposition to the Supreme Court's decision in *Roe v. Wade*.

51. Geneva College does not permit members of its community to participate in abortion. The Student Handbook states that "[m]orally unacceptable practices according to Biblical teaching are not acceptable for members of the Geneva College community. Specific acts such as sexual sins (i.e. premarital sex, cohabitation with a member of the opposite sex, rape, adultery, homosexual behavior, abortion, etc.) will not be tolerated."

III. Geneva College's Group Health Insurance Plans

52. To fulfill its religious commitments and duties in the Christ-centered educational context, Geneva College promotes the spiritual and physical well-being and health of its employees and students. This includes the provision of generous health insurance to employees and their dependants and the facilitation of a student health plan.

53. The plan year for the current employee health plan began on January 1, 2013. The next plan year is scheduled to begin on January 1, 2014.

54. Consistent with its religious beliefs about the sanctity of life, Geneva College's contract for

employee health coverage states that it excludes "[a]ny drugs used to abort a pregnancy."

55. The College requires that all full-time undergraduate students carry health insurance. If a student does not provide the College information about his or her health insurance coverage, the student will be enrolled in the College's UnitedHealthcare Plan. Full-time graduate students may enroll in the College's UnitedHealthcare Plan on a voluntary basis.

56. The College's religious convictions prevent it from facilitating student health insurance coverage that enables or facilitates access to ella, Plan B, or IUDs. The student health plan for the 2013-14 academic year does not include coverage of these items.

57 The student plan does not possess grandfathered status.

58. The plan year for the student plan began on August 1, 2013. It is scheduled to begin on August 1, 2014 for the 2014-15 academic year.

IV. The Heplers and Their Religious Beliefs in Business Practice

59. Wayne L. Hepler, his wife, and their adult children and families including Carrie E. Kolesar (collectively, "the Heplers") are practicing and believing Catholic Christians.

60. They strive to follow Catholic ethical beliefs and religious and moral teachings in all areas of their lives, including in the operation of their businesses.

61. The Heplers' sincerely-held religious convictions do not allow them to violate Catholic

religious and moral teachings in their decisions about the operation of their businesses. They believe that according to the Catholic faith their operation of their businesses must be guided by ethical social principles and Catholic religious and moral teachings, that the adherence of their business practice according to such Catholic ethics and religious and moral teachings is a genuine calling from God, that their Catholic faith prohibits them to sever their religious beliefs from their daily business practice, and that their Catholic faith requires them to integrate the gifts of the spiritual life, the virtues, morals, and ethical social principles of Catholic teaching, into their life and work.

62. The Catholic Church teaches that abortifacient drugs, contraception and sterilization are intrinsic evils.

* * *

[Page 33]

181. Despite the accommodation's convoluted machinations, a religious organization's decision to offer health insurance and its self-certification continue to serve as the sole triggers for creating access to free contraceptive and abortifacient services to its employees and plan beneficiaries from the same insurer they are paying for their insurance plan.

182. The College cannot participate in or facilitate the government's scheme without violating its religious convictions.

The Final Mandate and Plaintiffs' Health Insurance Plans

183. The plan year for the College's next employee health plan begins on January 1, 2014. As a result, the College now faces a choice. It can transgress its religious commitments by including abortifacients in the plan or by directing its insurance issuer to provide the exact same services. Or it can transgress its religious duty to provide for the well-being of its employees and their families by dropping its employee health insurance plan altogether in order to avoid being complicit in the provision of abortifacients, thereby incurring annual fines of at least $500,000.

184. Although the government has recently announced that it will postpone implementing the annual fine of $2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015. This postponement does not delay the crippling daily fines under 26 U.S.C. § 4980D or lawsuits under 29 U.S.C. § 1132.

185. The plan year for the College's next student plan begins on August 1, 2014. As a result, the College will face a choice in the period leading up to that date. It can transgress its religious commitments by including abortifacients in the plan or by triggering its insurance issuer to provide the exact same services by providing the self-certification. Or it can transgress its religious duty to provide for the well-being of its students by dropping its student health insurance plan altogether in order to avoid being complicit in the provision of abortifacients.

186. The College's religious convictions forbid it from participating in any way in the government's scheme to provide free access to abortifacient services through the College's health care plans.

187. Dropping its insurance plans would place the College at a severe competitive disadvantage in its efforts to recruit and retain employees and students.

188. The Final Mandate forces the College to deliberately provide health insurance that would facilitate free access to emergency contraceptives, including Plan B and ella, regardless of the ability of insured persons to obtain these drugs from other sources.

189. The Final Mandate forces the College to facilitate government-dictated education and counseling concerning abortion that directly conflicts with its religious beliefs and teachings.

190. Facilitating this government-dictated speech directly undermines the express speech and messages concerning the sanctity of life that the College seeks to convey.

191. Small employers such as the Hepler Plaintiffs suffer substantial burdens under the Mandate if they are forced to choose between providing health insurance consistent with their religious beliefs or providing no health insurance at all.

192. The "option" of the Hepler Plaintiffs to drop their employee health insurance would take health insurance away from their needy employees in violation of the Heplers' religious beliefs.

193. The "option" of the Hepler Plaintiffs to drop their employee health insurance would take health insurance away from themselves, their sibling co-owners and their families as employees and beneficiaries of the same plans, harming their families' well-being.

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GENEVA COLLEGE; WAYNE L. HEPLER; THE SENECA HARDWOOD LUMBER COMPANY, INC., a Pennsylvania Corporation; WLH ENTERPRISES, a Pennsylvania Sole Proprietorship of Wayne L. Hepler; and CARRIE E. KOLESAR;	)	
Plaintiffs,	)	
v.	)	Case No. 2:12-cv-00207-JFC
KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; HILDA SOLIS, in her official capacity as Secretary of the United States Department of Labor; TIMOTHY GEITHNER, in his official capacity as Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN	)	

SERVICES; UNITED STATES DEPARTMENT OF LABOR; and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

DECLARATION OF TIMOTHY R. BAIRD IN SUPPORT OF GENEVA COLLEGE'S MOTION FOR PRELIMINARY INJUNCTION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury the following:

1. I am Associate Vice President of Operations and Human Resources at Geneva College.

2. The allegations pertaining to Geneva College in the First Amended Complaint filed in this Court on May 31, 2012 (ECF No. 32 are true and correct.

3. The College will send out invoices to students and their families for the fall 2013 semester on or about June 30, 2013.

4. No later than June 20, 2013 (and preferably by June 15, 2013), the College will need to know whether to bill students for student health insurance for the fall 2013 semester.

5. No later than June 20, 2013 (and preferably by June 15, 2013), the College must inform its insurance broker (First Risk Advisors) and student plan insurer (United HealthCare) whether it will enter into an agreement regarding a student health plan for the 2013-2014 school year.

6. If the Court grants Geneva's Motion for Preliminary Injunction by June 20, 2013, the College will enter into an agreement with the broker and insurer for a student health plan for the 2013-2104 school year.

7. If the Court denies Geneva's Motion for Preliminary Injunction or does not rule by June 20, 2013, the College will not enter into an agreement with the broker and insurer for a student health plan for the 2013-2014 school year.

8. The College deems it sinful and immoral to facilitate a student plan that includes coverage for abortifacients. The College deems it sinful and immoral to facilitate a student plan, participation in which entitles a student to access insurance coverage of abortifacients. The College believes that the facilitation of such a plan would undermine its efforts to inculcate its students with Christian ethical principles, including compliance with the Sixth Commandment ("Thou shalt not murder").

9. If the Court grants the College's Motion for Preliminary Injunction, the insurer and broker will provide Geneva a student plan that excludes the abortifacients to which the College objects.

10. Many Geneva students rely upon the College to make a comparatively affordable group health plan available to them. Many Geneva students, especially returning students, reasonably expect that the College will once again make health insurance available to them for the 2013-14 school year.

11. Effective January 1, 2014, the Affordable Care Act will require Geneva students to possess health insurance coverage. If the College is unable, for

reasons of conscience, to facilitate a student plan for the 2013-14 school year, Geneva students who would otherwise have participated in the College's student plan will be forced to obtain insurance elsewhere.

Executed on this 20th day of May, 2013.

/s/ Timothy R. Baird

TIMOTHY R. BAIRD
Associate Vice President of
Operations and Human Resources